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December 15, 1938

The Reverend GERALD B. PHELAN, *President,*
The Institute of Mediaeval Studies,
Queen's Park Crescent,
Toronto, Ontario.

My dear Doctor Phelan:

The steady progress and development of the Institute of Mediaeval Studies since its foundation in 1929 have been a source of satisfaction to all who are interested in the advancement of higher learning in this country. It is particularly gratifying for me to witness each fresh advance in your work and to bless the efforts which you and your able staff are putting forth to acquire and spread a deeper, fuller and more thorough understanding of the Middle Ages.

You are applying the best methods of scientific scholarship to the study and interpretation of the thought of those Ages of Faith; you are sparing no efforts to unearth the treasures of wisdom buried in the writings of great mediaeval thinkers; you are delving into the unpublished manuscript sources of the history of that too-long-neglected epoch; you are bringing to light precious information about the life and customs, the ideals and the accomplishments, the institutions and culture of the period.

The publication of the present volume of MEDIAEVAL STUDIES, containing the first fruits of your researches, marks a further advance in the work of the Institute, a forward step which I not only heartily approve but which I also view with genuine pleasure and satisfaction. I cordially bless your undertaking and pray that it may meet with the fullest measure of success.

I trust that your efforts will receive support and encouragement from all who are interested in the work of the Institute and that your present project of publishing an annual collection of studies and researches may soon develop into the establishment of a quarterly review devoted to the advancement of learning in the field of mediaeval scholarship.

With kindest regards and best wishes,
I remain yours sincerely in Christ,

(SIGNED) ✠JAMES C. MCGUIGAN,

Archbishop of Toronto,
Chancellor, The Institute of Mediaeval Studies.

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Franz Brentano's Interpretation of Mediaeval Philosophy

ETIENNE GILSON

THE SECTION of J. A. Möhler's *History of the Church* that deals with the history of the ecclesiastical sciences during the Middle Ages, has been compiled from the posthumous notes of Möhler, by Franz Brentano, then a Catholic priest and a professor at the German University of Wurzburg.[1] As is usually the case in general histories, Brentano's chapter is a rather short one, but it gives a clear account of what was then known on the subject. Its main interest however does not lie in its remarkable clarity and general accuracy, but rather in the philosophical interpretation of the evolution of mediaeval thought which it propounds. As will be seen later, there are good reasons to think that the responsible author for that interpretation was not Möhler, but Brentano.

After reviewing the first centuries of mediaeval philosophy, the so-called Möhler's *History* goes on to say: "With Saint Thomas, the greatest philosopher of the Middle Ages, theology reaches its highest peak, but it begins to decline as soon as philosophy is in decadence. That decadence, which, as can be seen in the two other great philosophical periods, has its source in a darkening and lessening of the scientific spirit, follows three stages: by ceasing to be scientific, knowledge ushers in scepticism; as scepticism is unable to satisfy the needs of man, it gives rise to a reaction which pretends immediately to reach, by a rapid flight, the summits of intellectual knowledge, and to enjoy its results without going through the long and painful drudgery of investigation, observation and analysis. Thus, do we see in Antiquity, that after Aristotle the Stoics and the Epicureans devote themselves to the exclusive pursuit of practical interests; then come the Sceptics, who succeed in converting such eclectics as Cicero himself; lastly the neo-Platonic mysticism sets in, which gropes its way in the intelligible world. In modern times, we also see that, after Locke and Leibniz, there follows the superficial culture of the French and of the Germans, after which comes critical philosophy, and then, as a reaction against it, the doctrine of identity, the pantheistic mysticism of Schelling and the absolute idealism of Hegel. Now the same phenomenon strikingly manifests itself in the Middle Ages. As soon as the jealousy and the hairsplitting of the schools begin to replace the disinterested quest for knowledge, philosophy declines. Against the faulty dogmatism of the schools, nominalism reacts with a clearly marked sceptical tendency, but scepticism itself gives rise to an excessively bold reaction, largely mystical in its inspiration, which can be observed, under various forms, in the doctrines of Ramon Sibiud, Nicolas of Cues and the disciples of Ramon Lull whose influence then begins to be felt. The chief result of that movement is to lure away from intellectual research great intelligences, which lock themselves into the sanctuary of a truly religious mysticism, in order to achieve the immediate enjoyment of the supreme intelligible beauty."[2]

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[1] The *History of the Church* of J.-A. Möhler will be quoted from the French translation: J.-A. MOEHLER, *Histoire de l'Eglise*, transl. by P. Belet and published by Gams. 3 vols., Paris, Gaume and Duprey, 1868–69. Interesting details on the history of the book will be found in the Preface of Gams. The chapter on the *History of ecclesiastical sciences* is in Vol. II, pp. 467–520. In the German edition of Möhler's *Kirchengeschichte*, the chapter written by Brentano will be found in Vol. II, pp. 328–484.

The essential ideas of that highly suggestive text can be analyzed as follows. In the three great periods of its history: the Greek, the Mediaeval and the Modern, Philosophy has followed a similar evolution. That evolution runs through four successive stages: 1° there is a flowering of purely disinterested and speculative interest for intellectual knowledge; 2° there next comes a period of enthusiasm for essentially practical interests; 3° the theoretical character of true knowledge having thus been forgotten, mysticism sets in; 4° because men cannot abide by scepticism, they turn to mysticism as to its specific remedy.

There is good ground for believing, that when Franz Brentano wrote that chapter, he generously credited Möhler with one of the most important among his own ideas. As a matter of fact, we know for sure that when, in the Fall of 1866, Professor Carl Stumpf, then himself a student at the University of Würzburg, attended the first course of Brentano in the History of Philosophy, the young professor prefixed to his lectures an introduction, where he dealt at some length with the concept and the method of Philosophy. To which Professor Carl Stumpf immediately adds: "The doctrine of the four phases was then already propounded by him."[3] As Brentano himself was later to say it to Professor Carl Stumpf, the idea had struck his mind for the first time in the year 1860,[4] when he was recovering from a serious illness. He had been wondering what was the matter with those pretentious systems, that were so universally admired for some time, and then seemed to be no less universally rejected by all. It then occurred to his mind that what was happening in his own times with the philosophies of Fichte, Schelling and Hegel, had already taken place in the three main periods of the history of philosophy, but that there was no necessary reason why it should happen again in the future.[5] The very analogy between the histories of the three philosophical decadences pointed to their common cause, and the knowledge of that cause would greatly help in avoiding a repetition of the same tragedy. That consoling thought, that had saved him from philosophical despair, was naturally among the first ones which he wanted to transmit to his students.

In order to find it completely developed however, under Brentano's own name and responsibility, we have to turn to the lecture which he gave much later, on November 28, 1894, for the Literary Society of Vienna, under the title: *The four phases of Philosophy and its present condition.*[6] After restating the remarkable parallelism that can be observed between the course of evolution followed by philosophy in Antiquity, in the Middle Ages and in modern times up to the wreck of Hegel's metaphysical domination, Brentano proceeds here to describe each one of the four phases of philosophy with more precision than he had done in Möhler's *History of the Church.*

The first phase is characterized by a lively and pure theoretical interest. Plato and Aristotle have rightly said that "marvelling," or sheer curiosity has been the first motive which invited men to philosophize. That natural thirst for knowledge immediately gave rise to some elementary methods, which still greatly needed to be perfected, but could already yield truly scientific results.

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[2] J.-A. MOEHLER, *Histoire de l'Eglise*, Vol. II, pp. 479–480.

[3] OSKAR KRAUS, *Franz Brentano. Zur Kenntnis seines Lebens und seiner Lehre, mit Beitragen von Carl Stumpf und Edmund Husserl.* C. H. Beck'sche Verlagsbuchhandlung, München, 1919; p. 89.

[4] Franz Brentano was born in Marienberg bei Boppard on 16 January, 1838. When he first conceived his doctrine of the "four phases of philosophy" he was, therefore, twenty-two years old.

[5] O. KRAUS, *op. cit.*, pp. 89–90.

[6] FR. BRENTANO, *Die vier Phasen der Philosophie und ihr augenblicklicher Stand*, edit. by Oskar Kraus; F. Meiner, Leipzig, 1926. Brentano had already given a less complete exposition of the "four phases" in 1869; Cf. note 10.

The second phase is also the first one of the decadence. It is brought about by a weakening, or a deviation of the original interest for theoretical knowledge. From that time on the practical motives are becoming more and more influential in determining intellectual activity, with the necessary consequence that instead of remaining deep, strong and truly scientific in its inspiration, human thought makes itself both broader and more popular in its aims. It is the times of the philosophical sects, where a generalized interest in philosophy hardly makes up for the loss of its pristine scientific character.

There then usually takes place some sort of spiritual revolution, which brings the second period to a close. When knowledge does not keep faith with its own ideal, it does no longer deserve to be respected. Anybody can then see that philosophy does not prove what it preaches, which naturally leads to the conclusion that a truly demonstrated knowledge is an intrinsic impossibility. Hence an age of prevailing scepticism, where men make profession not to know anything, or to know so little that it practically amounts to nothing.

Yet, scepticism is essentially unable to satisfy the human desire for knowledge. "All men," says Aristotle at the beginning of his *Metaphysics*, "naturally want to know." Where and when scepticism prevails, that natural desire for knowledge breaks down all obstacles. Since natural knowledge has proved impossible, supernatural knowledge must fill up its place. The times are then ripe for those mystical speculations where everything is immediately intuited and nothing rationally demonstrated. This is the lowest conceivable point of the downfall. People think they know everything, and they know nothing. Nay, they do not even know the only thing which they still knew at the end of the sceptical period, to wit, that they know nothing.[7]

It was easy for Brentano to find historical justifications for his thesis, and he successively proved it for the three great periods which he had first distinguished. To limit ourselves to the Middle Ages, let us say with Brentano that after the magnificent achievements of Thomas Aquinas, all hopes were permitted. Yet the downfall of mediaeval philosophy began immediately after him. True, Duns Scotus also was a full-blooded metaphysician and a great theologian, but he was a Franciscan, and his own Order was so jealous of the brilliant success of the two Dominican doctors, Albertus Magnus and Thomas Aquinas, that they adopted him as their own champion. His doctrine then became the official Franciscan truth in both philosophy and theology. From that time on, the pure speculative interest which had given rise to the two doctrines was more and more completely sacrificed to that practical motive: to insure the ultimate triumph of one of the two religious Orders over the other one. It no longer was a quest for truth, but a fight between parties in which neither philosophy nor theology were really interested. Facts were no longer taken into account; observation was progressively replaced by endless and often meaningless distinctions, the whole process culminating in the famous *Actus Sorbonicus* where a harmless candidate had to dispute for twelve hours, with a short midday pause, against the dialectical objections of innumerable opponents. If scholastic philosophy is still today despised on account of its barren subtlety, it owes it to the defects of that age: the Scotist age.

The first stage of its decadence naturally led mediaeval philosophy to the second one, that of Scepticism, which was represented by the nominalism of William of Ockham. According to Ockham, it is not only true to say that the Universals do not exist, but it must be added that all our representations are mere signs which have no more likeness with their objects than smoke with fire. He considered it as impossible rationally to prove that God has created the world, that He knows it, and is Himself an infinite being; or to demonstrate that there is in man a spiritual and immortal principle. Moreover, no room was left for a natural moral order in such a doctrine, for God can prescribe or forbid what He pleases, His infinite will being as free to attach moral merit to lie as to veracity, or to murder as to the love of our neighbour. In point of fact, God could even prescribe us to hate Him, in which case the hatred of man for God would be morally meritorious. As was to be expected, the Church did its utmost to silence the Nominalists, but they took refuge in a very simple distinction. What Ockham and his disciples refused to hold as rationally certain, they made profession unreservedly to hold it by simple faith. In other words, they would maintain as theologically true what was philosophically unknowable, with the natural result that the very essence of truth itself was wholly annihilated.

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[7] Fr. Brentano, *op. cit.*, pp. 7–9.

Against that nominalistic scepticism there then arose a new and powerful reaction. It is a well-known fact that numerous and eminent mystics appeared around the end of the Middle Ages. Meister Eckhardt, Tauler, Henry Suso, John Ruysbroek and the author of the anonymous *German Theology*, which was to be published by Luther, belong to the group of the religious mystics. But there also were representatives of a more philosophical mysticism, Ramon Lull for instance, and Nicholas of Cues. The so-called *Ars Magna* of Lull, which could have yielded positive results in Logic, was used by him to provide apodictical and purely rational demonstrations of the Trinity, of the original sin, as well as of the Incarnation and of the Redemption. Lull had had very few followers during his own lifetime, but his disciples multiplied during the fourteenth century to such an extent that the University of Paris found it necessary to condemn his *Ars Magna*. In spite of that condemnation, Lullism continued to spread and it was condemned again by Paul IV at the times of the Reformation. As to Nicholas of Cues, whose influence, just as that of Lull, can still be felt in the works of Gordano Bruno, he advocated under the name of "learned ignorance" such an unknowledge as far surpassed all knowledge. He described it as an "intuition without concepts," or as an "incomprehensible comprehending" that transcended both sense and reason. For the trouble with reason is, that it is strictly bound by the principle of contradiction, whereas intellectual intuition is able to grasp, by simple sight, the coincidence of the opposites. A truly mystical method indeed, which enabled Nicholas of Cues to gather some insight not only in the mysteries of the human and of the divine natures, but even in the still deeper mystery of their union in the Incarnation of Jesus Christ. Such men as Lull and Nicholas of Cues announced by their irrationalism the end of the Middle Ages, just as the neo-Platonists had announced the end of Greek philosophy, and Hegel the end of modern metaphysics.[8]

The whole doctrine of the four phases of philosophy obviously bears the mark of what was its first origin in the mind of Brentano: a perfectly sound and legitimate reaction against philosophical despair. Instead of the continuous progress that can be observed in the history of sciences, the history of post-Kantian philosophy exhibited a series of wholly discontinuous revolutions, each system flatly contradicting the immediately preceding one until itself destroyed by its successor. Hence his conclusion, which he had already stated in his Theses of 1866: *Vera philosophiae methodus nulla alia nisi scientiae naturalis est.* Brentano wanted to discredit the passionate taste of philosophers for dogmatic systems and to bring them to adopt a truly scientific attitude towards metaphysical problems.[9] His law of the four phases of philosophy was not merely describing the history of the past philosophical decadences, it also pointed out their cause and showed how the recurrence of similar mistakes could be avoided in the future. Once it is well understood that philosophy begins to decline as soon as philosophers forget its purely theoretical nature, the remedy against its periodical diseases is at hand. Philosophy will remain in a healthy condition, and it will follow the same continuous progress as the other branches of human knowledge, provided only it keeps faith with its own nature, which is that of a pure speculative knowledge. In this sense was it true to say, as Brentano said it to Carl Stumpf, that his discovery of the law of the four phases of philosophy had been to him not only a light, but also a liberation.

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[8] Fr. Brentano, *op. cit.*, pp. 13–18.

Let it be added that history was setting at his disposal just as much material as he needed in order to prove that his law was an objective interpretation of observable facts. It can hardly be denied that western philosophy has followed a similar course during the three main periods of its history, and nobody who has achieved a personal survey of its evolution can have failed to notice striking analogies between the doctrinal attitudes of philosophers whose careers have run wholly independent from one another. The telling examples quoted by Brentano could be supplemented by many others of the same kind. It nevertheless remains true to say, that the German philosopher has had the great merit to single out those facts and to realize that their very existence raised an important philosophical problem. He even was clear-sighted enough to perceive that what was there at stake was nothing less than the nature of philosophical knowledge itself, and he should be given full credit for having been the first to see it.

After paying him that well deserved homage, there remains for us a much less pleasant duty, which is to test the truth value of his philosophical interpretation of those historical facts. That his interpretation of them was essentially philosophical seems to be beyond a doubt, for not only did he conceive his idea of the four phases as an answer to a purely philosophical problem, but that answer itself took in his mind the form of a philosophical law. It is not excluded that his early study of the positive philosophy of Auguste Comte, and quite especially of the famous Comtian law of "the three stages" invited him to such a bold generalization of some historical facts. It is true that Brentano has rather severely criticized Comte, and that his own four phases are widely different from the three phases of Comte, both in their contents and in their general inspiration. The fact remains however, that "die drei Phasen" of Auguste Comte might have invited him to conceive the philosophical evolution of mankind in terms of phases, and to systematize the infinite variety of concrete historical experience by means of an exceedingly simple formula.[10]

The main trouble with such simplifications is, that they usually are over-simplifications. In the first place, the sketchy description of mediaeval philosophy which has been given by Brentano begins with Saint Thomas Aquinas. It could not have begun otherwise. If philosophy always begins by a purely speculative and rational phase, the only conceivable starting point of its history in the Middle Ages has necessarily to be the doctrine of Thomas Aquinas. Yet, everybody knows that there has been a mediaeval philosophy before the middle of the thirteenth century, so much so that Brentano himself had to describe it, from the notes left by Möhler, when he was writing his chapter of Möhler's *History of the Church*. In other words, the speculative phase is bound always to come first, provided only we suppress what would otherwise come before it. A true picture of mediaeval philosophy should begin with Alcuin, who was by no means a great philosopher, but whose temper was certainly that of a sincere lover of knowledge for its own sake. Almost immediately after him should come the still enigmatic figure of Scotus Erigena, whose doctrine closely resembles that of Plotinus. The opening phase of mediaeval philosophy was therefore what should have been the last phase of its decadence: a mysticism where intuition is used as a substitute for our powerless abstract reasoning. This obvious fact suffices to prove that the history of the philosophical doctrines cannot be deduced *a priori*. The existence of a given philosopher and the building up of a given philosophy are particular and contingent historical facts, themselves related to innumerable equally particular and contingent other historical facts. In the case under discussion, there were first the person of Erigena, then the probable fact that he knew some Greek when he came from Ireland to France, then the well established fact that, having found at Saint Denis the works of two Greek neo-Platonists: Preudo-Dionysius and Maxim the Confessor, he translated them into Latin and fell thereby under their influence. It was therefore largely owing to accidental circumstances that mediaeval philosophy began as a mere continuation of the last phase of Greek philosophy. To express it in Brentano's terminology, one should have to say that mediaeval philosophy began by the ultimate phase of its own decadence, which is a palpable absurdity.

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[9] Fr. Brentano, *Über die Grunde der Entmutigung auf philosophischem Gebiete*, in *Über die Zukunft der Philosophie*, Leipzig, F. Meiner, 1929, p. 88.

[10] Fr. Brentano, *Auguste Comte, und die positive Philosophie*, in *Die vier phasen der Philosophie*, pp. 99–133. The paper of Brentano on A. Comte was first printed in 1869, when he still was a Catholic priest. His religious crisis took place in 1870 and he openly left the Church on 11 April, 1873. Whether or not Brentano was already acquainted with the positivism of A. Comte when he first conceived his own "four phases of philosophy," I am not prepared to say.

Another striking fact, which cannot be much more easily reconciled with Brentano's interpretation of mediaeval philosophy, is that the Middle Ages have completed at least twice the whole course of their evolution. At least, their history could be easily construed to justify that statement. Why not say, for instance, that after the speculative dogmatism of Saint Anselm, the near-nominalism of Abelard resulted in the scepticism of John of Salisbury, to find its ultimate conclusion in the mysticism of the Victorines? The four phases would thus have been completed even before the birth of Thomas Aquinas. Of course, objections could be raised against such an interpretation, but many more, and much more serious ones could be found against the second series of four phases which has been described by Brentano. One does not find in the first series the chronological impossibilities that mar the second one. Thus, for instance, the speculative mysticism of Ramon Lull (1235–1315) cannot possibly have arisen as a reaction against the scepticism of William of Ockham (1300–1350). Even Meister Eckhardt (1260–1327) wrote and taught before the times of the English nominalist, so that, in such cases, the mystical reaction would have preceded the sceptical move against which it is supposed to have reacted. There seems to be, in the doctrine of Brentano, together with a solid nucleus of truth, some fundamental mistake concerning the very nature of that truth.

One of the most notable characters of the four phases of philosophy, such as Brentano conceived them, is that they are an empirical explanation of essentially philosophical relations. To begin with, the so-called first phase does not entail the recognition by the human mind of any principle, or set of principles, which should be received as necessarily true. As soon as a pure intellectual interest for speculative knowledge is there, philosophy also is there. From that point of view, the actual contents of intellectual knowledge is of no importance whatsoever and it plays no part as a determining factor of the evolution of philosophy. So long as men will remain interested in knowledge for knowledge's sake, philosophy will remain in its first phase, the only one in which it keeps faith with its own essence and can fulfil its own destiny. This is so clearly an affair of mere mental attitude, that the whole problem of the transition from the first phase of philosophy to the second one reduces itself, in the mind of Brentano, to what he calls a problem of "cultural psychology." Let there be the slightest weakening of the speculative interest of the mind and the practical phase of philosophy shall begin at once. Now to maintain theoretical principles on the strength of purely practical needs is to acknowledge that those principles are without theoretical justification. Hence scepticism, itself soon to be followed by a mystical reaction. Consequently, the remarkable parallelism observed by Brentano between the three great periods of the history of philosophy can be explained away by "considerations of the simplest sort borrowed from cultural psychology." [11] Those things do happen and there is nothing more to be said about them.

Such an explanation was quite in keeping with the central inspiration of Brentano's own philosophy. Some of his disciples strongly resent the accusation of psychologism which is often directed against his philosophical attitude. In what measure they are justified in their protest is a difficult problem, whose solution would require a discussion of Brentano's doctrine as a whole. The truth about it seems at least to be, that Brentano often resorted to psychological and, more or less empirical explanations, without ever losing the right feeling that, in philosophical problems, psychological necessities are of a more than empirical nature. For instance, where he says that the passage from the first phase to the second one is ascribable to a weakening, or to a corruption of the speculative interest, he is using two terms whose respective meanings are altogether different; for indeed the weakening of an interest is a mere psychological fact, whereas the corruption of a notion entails a speculative error about its meaning. It can hardly be doubted that, in Brentano's own mind, the second term was a correction of the first one, or, at least, was intended to leave open another abstract possibility. The fact remains however, that he always considered the knowledge of psychological laws as identical with philosophical knowledge itself: *die Kenntnis der psychischen Gesetze, also das philosophische Wissen.*[12] No wonder then if both in Möhler's *History of the Church* and in his own *Four Phases of Philosophy*, he never explicitly resorted to more than psychological explanations of the philosophical evolution.

If this be true, the analysis of the disease of philosophy by Brentano was itself part of that disease, in this sense at least, that having assigned to it an unphilosophical cause he could suggest for it but an unphilosophical remedy. It is rather surprising that he himself never noticed it. If intellectual curiosity is a natural feature of the human mind; if, in Aristotle's own words, all men naturally desire to know, the very weakening of that natural desire is an abnormal phenomenon which claims for some intelligible explanation. Why indeed should men so easily get tired of the normal exercise of reason and regularly turn from its speculative and natural use to another use of it which is both essentially practical and unnatural?

To that question, the only conceivable answer is, that for reason to keep faith with its own nature is not a simple question of good will. Men would never despair of the speculative power of reason if they only knew how to use it. What is the trouble with them is not that they do not want to know, but rather that they do not know how to know. The least mistake made by speculative reason on the nature and meaning of its own principles will unavoidably lead it to speculative impossibilities. Hence philosophical failures which their responsible authors regularly blame on the speculative power of reason itself, instead of looking for their cause at their own inability to make good use of it. Consequently, if there are phases in the evolution of philosophy, their order should be rather different, in so far at least as the three first ones are concerned. Supposing an initial stage of pure speculative interest, philosophy will remain in the same sound condition as long as it succeeds in its speculative undertakings. As soon as, by its own fault, it fails and begins to realize its failure, philosophical reason decrees that the discovery of a pure speculative truth is an intrinsic impossibility; hence one of the many sceptical crises which are recorded by history. But precisely because all men naturally wish to know, scepticism can neither ultimately prevail, nor even last very long even as an heroic intellectual attitude. In order to save themselves from philosophical despair, some men will then ask from mystical intuition the certitudes which they can no longer expect from rational demonstration; while some others, more docile to the urgent requests of moral life, will attempt to legitimize the conclusions of metaphysical speculation as postulates of the practical reason. The mystical escape from scepticism is represented in Antiquity by Plotinus, in the Middle Ages by Nicholas of Cues, and in modern times by Schelling. The ethical escape was preferred in Antiquity by the Stoics and the Epicureans, at the end of the Middle Ages by the Christian school of ascetic life and by Erasmus, in modern times by Immanuel Kant and the various representatives of moralism in philosophy. Sometimes, the same man will try to combine both recipes and do it in a more or less successful way. At any rate, the transition from one of those phases to another, can never be accounted for by some purely psychological reaction; it must always be traced back to some necessary relation between philosophical positions.

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[11] FR. BRENTANO, *Die vier Phasen der Philosophie*, p. 7.

[12] FR. BRENTANO, *Über die Grunde der Entmutigung auf philosophischen Gebiete*, p. 100.

The main point however is not there. Before deciding the order according to which the four phases of philosophy follow each other, it seems advisable to make sure that such phases do actually exist. As a matter of fact, nothing would be less sure than their existence, at least if they were to be conceived as the successive and obligatory stages of a temporal evolution. As can be seen from his criticism of Comte, Brentano himself never conceived the four phases of philosophy as the concrete expression of some necessary law. Far from thinking that philosophy is bound to begin as a pure speculation and then to degenerate into moralism, scepticism and mysticism, he felt convinced that his discovery of the four phases would inspire philosophers with a deeper respect for the essentially speculative character of philosophy. This being granted, there nevertheless remains to be seen if the temporal meaning that is inseparable from the word *phase* is not somewhat misleading in the present occasion.

The sometimes remarkable analogy that can be observed between the history of the main philosophical periods is itself a philosophical phenomenon due to essentially philosophical causes. All that which, in the history of philosophy, can be traced back to non-philosophical causes is itself irrelevant to philosophy as such. The Durckheimian notion of a sociological history of philosophy for instance, could lead to an interesting study of the social structure of philosophical schools conceived as collective facts; but philosophical schools can exhibit the same structure as social groups and yet be the vehicles of widely different philosophical doctrines. It may prove interesting to stage a comparative study of the Mohammedan scholasticism with the Jewish and the Christian one from the tenth century to the fourteenth century. Mr. Masson-Oursel has attempted to do it [13] and his conclusion is that, taken as a collective social fact, scholasticism is "the pedagogy of a religion." A rather vague formula indeed, and probably not the best one even from a purely sociological point of view; but a perfectly empty and meaningless one in so far as philosophy itself is concerned, since it covers wholly antagonistic philosophical positions: Avicenna and Algazel, Maimonides and Gabirol, Thomas Aquinas and William of Ockham. In short, sociology can help in defining some external conditions of the exercise of philosophical thinking; it may succeed in explaining equally external analogies between those conditions, but such interpretations will always leave out philosophy itself because they cannot account for the very contents of the various philosophical positions.

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[13] MASSON-OURSEL, *La Scolastique, Etude de* 1920, pp. 123–141.
philosophie comparée, in Revue Philosophique,

For similar reasons, it is a misleading method to look for phases in the succession of philosophical doctrines, and to account for the existence of analogous phases by the natural play of the simplest psychological laws. Seen from without, those regular consecutions of philosophical events necessarily look like phases, but a closer inspection of the facts always reveals that any one of those so called phases might have actualized itself at practically any time. In point of fact, it may even happen either that all of them be simultaneously represented, or that, on the contrary, the course of history jump over two or three of the preceding phases in order to reach immediately the last one. In not infrequent cases, the same philosophy will provide room for two or three of those so called phases, which seem then to co-exist in an indivisible unity. Thus, for instance, after beginning by the fourth phase with Scotus Erigena, the Middle Ages have witnessed the simultaneous existence of a purely theoretical attitude, with Abelard, and of an essentially practical attitude with Saint Bernard. The first and the second phases were therefore given together. But the fourth phase, the mystical one, was also given together with the practical one in the doctrine of Saint Bernard, just as the sceptical phase was co-existing with the speculative one in the doctrine of Abelard. For Abelard was a highly speculative mind indeed, but he often speculated in the wrong way. In those cases, there is no trace of any transition from the speculative to the practical, or from the practical to the sceptical and to the mystical attitudes. Immediately after, the doctrine of the most famous among the disciples of Abelard, John of Salisbury, has likewise combined the practical with the sceptical phases, each of them being there much less the consequence of the other one than its natural complement. Should we look at the thirteenth century, we would find there the rational attitude of Saint Thomas, given together with the mysticism of Saint Bonaventure and of Ramon Lull, and with the practical, anti-speculative tendencies of the Franciscan Spirituals. From the fourteenth century until the dawn of the Renaissance, there will always be representatives of the purely speculative attitude of Saint Thomas, such as Cajetan for instance, battling against a countless host of sceptics and of practically or mystically minded theologians. Of course, it will be objected that, in the fourteenth century, Thomism was but a survival; to which I beg to answer that, for any living thing, it is an excellent thing to survive, since it is still to live, and the survival of a single truth is of much more value than the new arrival of many errors. Let us therefore conclude that, strictly speaking, it is hardly possible to call "phases" several different philosophical attitudes, which are, or can always be simultaneously represented.

If the historical analogies quoted by Brentano cannot be defined as the successive stages of a regular consecution in time, what is their nature, and how is it possible to explain their existence? They are necessary relations between philosophical principles and philosophical consequences, and those relations are bound to repeat themselves every time, the same principles being posited, philosophers will think consistently enough to pursue them to their ultimate conclusions. Let the most powerful philosophical genius in the world ask the wrong question, or ask the right question in the wrong way, his philosophical undertaking is bound to be a failure. Now the failures of the masters seldom fail to breed scepticism in the minds of the disciples; not at all by reason of some psychological fatigue, but simply because, once it is admitted that a certain method is the only sound philosophical method, and that a certain set of principles is the only receivable set of philosophical principles, the failure of that method and of those principles becomes identical with the failure of philosophy itself. On the other hand, it is true to say, with Kant, that metaphysical questions cannot not be asked, even by those who feel convinced that they cannot be answered. This again is not an empirical necessity of a merely psychological nature; metaphysical questions cannot not be asked, because they arise from the very principles of human knowledge. Unless philosophy lose all interest in its own principles, it cannot fail to find itself confronted with those problems. Unavoidable problems have to be answered, and when speculative reason has failed to justify its own answers to such problems, their answers have to be maintained either as postulates of practical reason, or as objects of some supra-rational intuition.

Thus understood, the nucleus of truth that is contained in the doctrine of the four phases of philosophy reduces itself to the endlessly repeated historical evidence, that there is but one way for philosophy to last, which is for it to be true. There is no other philosophy than perennial philosophy, which always lasts and will always survive the countless failures of its various surrogates. Their number does not much matter, nor their ceaselessly changing order of succession; for just as true philosophy is essentially one, its surrogates are but the manifold expression of one and the same fact, which is its corruption. Thus, philosophy is always there, a standing truth to those who have once recognized its nature, a standing failure to those who mistake it for what it is not. Neither moralism, nor scientism, nor psychologism, nor any conceivable variety of pseudo-mysticism are philosophy; consequently their own failure is not its failure. They failed in the Middle Ages as completely as they had already failed in Antiquity, but no more completely than they are failing in our own times, and, being the same mistakes, they were bound to fail in the same way.

Verum Sequitur Esse Rerum

GERALD B. PHELAN

THE question discussed in this paper belongs to that realm of thought in which problems of ontology overlap problems of knowledge. A recent French author[1] has called this common ground, appropriately, I think, *l'ontolgie du connaître* — the ontology of knowing. It is plain that a discussion of truth inevitably involves problems of knowledge, since it is concerned with the instrument of knowing truth, the judgment. It is not less clear that, to deal with such problems, one must enter into the realm of metaphysics; for, *truth* is a transcendental attribute of being and *judgment* is an affirmation of being, declaring that, that which is connoted by the subject *is* that which is connoted by the predicate. Consequently, we are obliged to deal with this problem metaphysically or else to refrain from dealing with it at all.

The Problem of Truth

Truth is essentially a relation.[2] Nothing created is, strictly speaking, true in itself.[3] It is true only by relation to something else.[4] Even in our conception of uncreated truth we introduce a mental relation between uncreated Intelligence and uncreated Being — two aspects of the Divine Essence which philosophers may distinguish in their concepts but which are really identical in Being.[5] The true, then, is that which is, or being, affected with a relation.[6] What is, is in itself being, a thing and one; for everything which is, *is*, is *what* it is, and is *one* thing. It possesses all these attributes in itself and without relation to anything else.[7] Nothing, however, can be said to be true except in relation to some being for whom it is true.[8] Here, it is imperative to note that truth, though it be a relation, is not relative. No relation on earth is relative: things are relative by relations. If, then, it is correct to say that nothing can be true except in relation to some being for whom it is true, it is by no means implied that a thing can be true for one and not true for another. It simply means that when a thing is related in a certain manner to another, then it is true; and it cannot properly be said to be true unless it is so related. In relation to God, all things are true, for God metes out to them their truth, or if you will, by creating them, puts them in that relation to Himself by which they can be said to be true.[9] In relation to things, the mind of men may or may not be true, for man does not give things their truth because he does not give them being; he does not put them in relation to his mind, he puts his mind in relation to them; he subjects himself to things in order that they may give him something of what they have received from God and mete out to him their being, which they have received from God, and so make his mind true in relation to them.[10] Thus the things of nature are situated between two minds — the mind of God and the mind of man — and may be said to be true in virtue of their relation to both. True because they fulfil in themselves the order created by the mind of God; true because they can give to the mind of man a just appreciation of what they are.[11]

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[1] YVES SIMON, *L'ontolgie du connaître*, Paris, 1934.

[2] Veri enim ratio consistit in adaequatione rei et intellectus. (De Verit. I, 3, c).

[3] Res autem non dicitur vera nisi secundum quod est intellectui adaequata. (De Verit. I, 2, c).

[4] Res dicitur vera per ordinem ad intellectum. (De Verit. I, 3, c).

[5] Scientia Deo attributa significat aliquid quod in Deo est, et similiter vita, essentia et cetera huiusmodi; nec differunt quantum ad rem significatam sed solum quantum ad modum intelligendi; eadem enim res penitus in Deo est essentia, vita et quidquid huiusmodi de ipso dicitur; sed intellectus noster diversas conceptiones habet intelligens in eo vitam, scientiam, et huiusmodi. (De Verit. II, 1, c).

[6] Convenientiam vero entis ad intellectum exprimit hoc nomen *verum*. (De Verit. I, 1, c).

[7] Cfr. De Verit. I, 1, c. One cannot say, indeed, that whatever is has all these attributes *from* itself or *through* itself or *by* itself, but simply *in* itself. From the point of view of the *origin* of its being and unity, what *is* may or may not be related to something else. If the being in question be a contingent being, it is causally related to the necessary Being and dependent upon the Necessary Being for its origin; if, on the other hand, the being in question is the Necessary Being Itself, then it is not causally related nor dependent for its origin upon another being. However, these considerations belong to the realm of efficient causality and concern the question of *how* or *why* a thing exists, not *what* a thing is. Every being is *what* it is *in itself* although it may BE (i.e., exist) *through*, *by*, or *from* another.

[8] . . . secundum convenientiam unius entis ad aliud; et hoc quidem non potest esse nisi accipiatur aliquid quod natum est convenire cum omni ente. Hoc autem est anima quae quodammodo est omnia. (De Verit. I, 1, c).

Truth, then, is a relation. We may now proceed to ask: what is the nature of this relation? What are the terms of this relation? How are these terms related to each other? On what is the relation founded? What effect does this relation produce? What, in short, is truth?

Definition of Truth

The sceptical Roman Governor who asked the question, "What is truth?" of the King who was accused before him, did not wait for an answer. He never realized what a sublime answer might have come from Him who was the Truth Incarnate. But had he only known what a great Athenian teacher had replied to that same question some three and a half centuries before, Pilate would have had food enough for thought. Aristotle could not give an answer comparable in depth and meaning with that which Christ had given — "I am the Way, the Truth, and the Life" — but his answer is simple, clear, exact, and deep: — "To say of what is, that it is, and of what is not, that it is not, is true."[12] Here we have the relation we are in search of, the relation between what is said and what is. Later on, that relation will be explicitly stated in a definition which has become classical, but whose author is not known. For centuries it was believed and repeated that Isaac the Jew, Honain ben Ishak, an historian of Bagdad, who died in 876 A.D., was the author of the famous definition of truth — *Veritas est adaequatio rei et intellectus* — "Truth is the correspondence of the thing and the understanding" — but recent investigation has failed to reveal it in the writings of that Jewish compiler.[13] Wherever it may have come from, that definition of truth has achieved triumphal success in the history of philosophy. Let us analyze it and try to see why it should have been so universally accepted.

First of all, since truth is essentially a relation, as we have seen, there must be two terms involved: nothing is related to itself.[14] Aristotle placed the terms of the relation of truth in *what is said* and *what is:* the Pseudo-Isaac's definition places the relation between *the thing* and *the understanding*. The divergence in these statements is only apparent. *What is said*, may be said verbally (orally) or mentally and after all, words as uttered are but signs of the understanding. *What is said*, therefore, means primarily what is said in the mind and secondarily only what is said in words.[15] The terms of the relation of truth then are *what is* or *the thing* and *what is said* or *the understanding*.

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[9] In rebus creatis invenitur veritas in rebus et in intellectu . . . in rebus autem secundum quod imitantur intellectum divinum, qui est earum mensura. (De Verit. I, 8, c).

[10] Res existens extra animam per formam suam imitantur artem divini intellectus, et per eamdem nata est facere de se veram apprehensionem in intellectu humano. (De Verit. I, 8, c) . . . natae sunt facere veram apprehensionem in intellectu humano qui per res mensuratur. (*ibid.*)

[11] Res ergo naturalis inter duos intellectus constituta secundum adaequationem ad utrumque vera dicitur: secundum adaequationem ad intellectum divinum dicitur vera in quantum implet hoc ad quod est ordinata per intellectum divinum. . . . Secundum autem adaequationem ad intellectum humanum dicitur res vera in quantum nata est de se formare veram aestimationem. (De Verit. I, 2, c). Intellectus divinus est mensurans non mensuratus; res autem naturalis est mensurans et mensurata; sed intellectus noster est mensuratus non mensurans quidem res naturales sed artificiales tantum. (*ibid.*)

[12] ARISTOTLE, *Metaph.* Bk. IV, cap. 7, 1011^{b} 25.

[13] Cfr. J. T. MUCKLE, Isaac Israeli's Definition of Truth, in *Archives d'histoire doctrinale et littéraire du moyen âge*, Paris, J. Vrin (1933), Vol. VIII, p. 1–8.

[14] Idem autem non adaequatur sibi ipsi, sed aequalitas diversorum est. (De Verit. I, 3, c).

We may therefore proceed to investigate what relations may exist between things and the understanding. In things there is a twofold element, each, *suo modo*, making the thing to be what it is. Everything which is, *is* (exists) and it is *what* it is. There is thus in things that whereby they *are* and that whereby they are *what* they are.[16] Should it be possible to establish a relation solely between that whereby a thing is *what* it is and the understanding, knowledge of the thing would result,[17] but it would not be complete because, the understanding, not yet put into relation with that whereby what is, *is*, (i.e. exists), would have no knowledge of the likeness of what is known to what is in nature; it would not yet have taken cognizance of the fact that what it knows *exists* in a manner other than being understood.[18] To complete that knowledge a further relation must be established,[19] this time, reaching beyond that by which the thing is *what* it is to that whereby it *is* (exists).[20] That relation will then be set up by the act whereby the understanding affirms or denies that what *is* (exists) in the mode of existence proper to thought, is identical with what *is* in the mode of existence proper to things — in other words what *is understood* (exists as understood) *is real* (exists as a real being) — or again, in more technical language, the essence which has intentional existence in thought has physical (actual or possible) existence in reality.[21]

If the affirmation, or denial, is in accord with the facts, then it is true; if it is an affirmation contrary to the facts then it is false. But, you may ask, how can it be ascertained whether the affirmation or denial is or is not in accord with the facts? Obviously, only by reducing it to the facts, by bringing it down to face the facts, by confronting it with the facts.[22] In other words, either corroborating that affirmation or refuting it, by the only means at man's disposal of getting in direct and immediate contact with the actually existent finite real, the fact, viz. sense experience.[23] If, however, the affirmation or denial is not an affirmation or denial of actual (factual) existence, but of possible existence or of the necessary implications of either actual or possible existence, then the reduction or confronting must be made between the affirmation or denial and the first principles of being and knowledge — the principles of identity, non-contradiction, sufficient reason, excluded middle and so forth.[24] For these are simply statements of what things *must* be in order *to be* at all and are immediately apprehended as such as soon as being is revealed to the intelligence, through the medium of sense perception.[25] If as a result of this confrontation it is seen that the affirmation or denial is in harmony with these principles, the affirmation or denial is thus verified, if it is found to disagree with those principles, then the affirmation or denial is shown to be false. Hence, St. Thomas says that sense experience and first principles are not only the starting point of knowledge but the ultimate tests of the truth of judgments.[26] Suppose I should say, "this paper is blue"; I make a judgment in regard to a fact. The judgment I make is an act which puts together two essences or quiddities (*paper* and *blue*) and gives the composite (blue paper) an existence in my mind which, by the same act of judgment, I affirm to correspond to the existence which those two essences or quiddities exercise in this thing existing in the realm of extra-mental reality. To test the truth of that judgment (in the language of St. Thomas to resolve that judgment, to reduce it to the facts), I must throw it into experience and see if the testimony of my senses corroborates my judgment, if, in a word, *this paper* and *blue* actually exist in the unity of the thing as I have made them exist in the union of my two concepts. In thus confronting my judgment with the facts, I find that *this paper* and *blue* do not exist together and that I am not justified in putting them together in my mind; because I would then be saying of what is not, that it is. My judgment, this paper is blue, is therefore seen to be false by the evidence of the senses.

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[15] Voces autem eodem modo recipiunt veritatis praedicationem sicut intellectus quos significant. (De Verit. I, 3, c).

[16] In omni creato essentia differt a suo esse. (Sum. Theol. I, 54, 3, c). Cuiuslibet creaturae esse est aliud ab ejus quidditate. (De Verit. X, 12, ad 1).

[17] Ex hoc quod cognoscens habet similitudinem rei cognitae, dicitur habere veram cognitionem. (In VI Metaph. lib. 4, Cathala ed. n. 1234).

[18] Sum. Theol. I, 16, c.

[19] Sum. Theol. II–II, 173, 2, c.

[20] Cfr. Jacques Maritain, *Les degrés du savoir*. Paris, 1932, p. 175, note 1.

[21] In VI Metaph. lib. 4, Cathala ed. nn. 1230–1237.

[22] Judicium non dependet tantum a receptione speciei sed ex hoc quod ea de quibus judicatur, examinantur ad aliquod principium cognitionis sicut de conclusionibus judicamus eas in principia resolvendo. Sed quia primum principium nostrae cognitionis est sensus oportet ad sensum quodammodo resolvere omnia de quibus judicamus. (De Verit. XII, 3, ad 2).

[23] Sensus sunt extremi sicut intellectus principiorum. (*ibid.*)

[24] Sicut in demonstrabilibus oportet fieri reductionem in aliqua principia per se nota, ita investigando quid est unumquodque. (De Verit. I, 1, c). Sicut enim a veritate intellectus divini effluunt in intellectum angelicum species rerum innatae secundum quas omnia cognoscit, ita a veritate intellectus divini exemplariter

Suppose, however, I say "angels are mortal." I have put two essences (*angel* and *mortality*) together and, affirming one of the other I have given them existence in a single composite in my mind, affirming that they exist in reality (actually or possibly) in that unity. How can I test the validity of such a judgment? I cannot confront my judgment with the testimony of the senses for I cannot see or feel an *angel* nor can I see or feel *mortal*. I proceed to study the essence of an angel, to analyze *what* (not *whether*) an angel is until I finally succeed in deducing from the very nature of an angel the necessity of its immortality. Then I can say that an angel cannot be an angel and still be mortal. Consequently, since a thing cannot be and not be at the same time, an angel cannot be what an angel cannot be, namely mortal, and still be an angel. Immortality is essentially wrapped up in the nature of an angel and consequently my judgment is shown to be false on the evidence of the first principles of knowledge. If the phrase, *Critique of Knowledge*, has any valid significance it can only apply to this procedure whose roots are in the study of what knowledge is in itself and with reference to what is not knowledge, but reality.

We may now trace the problem back to those Epistemological roots and investigate first what it means to set up a relation between the understanding and that whereby a thing is *what* it is, and how that relation may be brought to completion by the establishment of a further relation between the understanding and that whereby a thing *is*.[27]

Thought — Thing — Object

When the problem of knowledge is posited in the terms so familiar to philosophy since the seventeenth century — "How can the mind pass from knowledge to

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procedit in intellectum nostrum veritas primorum principiorum secundum quam de omnibus judicamus. (De Verit. I, 4, ad 5).

[25] Omnis nostra cognitio originaliter consistit in notitia primorum principiorum indemonstrabilium. Horum autem cognitio in nobis a sensu oritur. (De Verit. X, 6, Praeterea).

[26] Dicit (Aristotle) quod sensus sunt extremi sicut intellectus principiorum; extrema appellamus illa in quae fit resolutio judicantis. (De Verit. XII, 3, ad 2).

[27] Verum sequitur esse rerum. (De Verit. I, 1, 3rd. sed contra). Judicium est completivum cognitionis (Sum. Theol. II-II, 173, 2, c). Veritas fundatur in esse rei magis quam in quidditate. (I Sent. d. 19, q. 5, a. 1).

eality?" — it becomes an insoluble problem. Insoluble, not because it is too difficult to solve, but because it is a pseudo-question — a question which has no meaning and no answer. We are familiar with the story of the king who asked his wise men o explain why the weight of a pail of water with a fish in it was less than the weight of the water plus the weight of the fish. When the wise men had given him a great many reasons why it *had* to be so, the king suggested that they weigh the pail of water and the fish apart and then weigh the pail of water with the fish in it. The esult showed, of course, that the sages had given learned and elaborate explanaions of a fact which was not a fact. The king's question was a pseudo-question; it had no meaning and therefore no answer. It is the same for the question asked by hose philosophers who have lost touch with the traditional principles of the metaphysics of knowing. If we weigh the words, as the king weighed the fish, the absurdity of the question becomes obvious. "How does the mind reach reality from knowledge?" supposes that what is first known is knowledge and from a knowledge of knowledge the mind passes to a knowledge of things. But how can the mind know knowledge unless there be knowledge to know and how can there be knowledge if he mind does not first know? To know knowledge presupposes that there first is omething known which is not knowledge but is the cause or occasion or at least the antecedent of knowledge; this being known, then the knowledge itself may be known. But the mind cannot know knowledge before it knows something which is not knowledge any more than, in taking two steps, a man can take the second step irst. It is necessary first to know; then, secondly, the knowledge thus acquired may be known.[28]

To attempt, therefore, to pass from knowledge to reality is futile and meaningless. The problem is badly stated in the familiar formula of modern epistemology. If we want an answer to the problem of knowledge we must first learn how to ask the question. A number of contemporary Thomists have written luminously on the way o ask the question and the way to answer it. The writings of Tonquedec, Noël Simon, Gilson, Maritain, and others deal fully with this problem. Leaving aside urther discussion of the point I shall state the situation as follows: it is not a quesion of the objectification of thought but the objectification of thing. In other words, he question is: How does a thing become an object? How does what *is* in physical xistence (a thing), become existent in intentional existence (an object)?

Modern thinking has become so saturated with idealism that our very words are weighted with idealistic meaning. Thus, the terms "thing" and "object" have beome almost synonymous. We speak quite casually about the *objects* around us (this able, these chairs, those trees) when we mean the *things* around us. We do not feel hat it makes much difference whether we call them *things* or *objects*. Of course it s obvious that if things cannot *be*, apart from *being thought*, there can be no difference between a thing and an object. It becomes impossible to distinguish between them f we begin by imagining that knowledge projects itself into reality. Then, indeed, he only things that are, are the objects to which knowledge gives being. This is, f course, true for Divine Knowledge but not for human knowledge. So, if an object s what an object ought to be — a thing in as much as it is known or loved — then here is a considerable difference between things and objects. All things are objects n relation to God Who knows and loves all things but there are multitudes of hings which are not objects for us because we do not know them, and not knowing hem do not love them. So, when things become known they become objects, they re *objectified*. We shall not enquire now how things become objects; that would carry us too far afield. The works to which I have referred, particularly those of Maritain and Simon, furnish plenty of discussion on this point. I simply state the problem and pass on to discuss some points in the Thomistic theory of knowledge which elucidate the problem of truth.

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[28] Nullus autem percipit se intelligere nisi ex hoc quod aliquid intelligit; quia prius est intelligere aliquid quam intelligere se intelligere. (De Verit. X, 8, c).

Intentional Being

To know is to be or to become what the thing known is in itself.[29] Beings which are capable of knowing differ from beings which are not capable of knowing in that the former, by their very nature, are apt to possess the essences of things other than themselves, as well as their own essences, while the latter can possess no essence but their own.[30] Knowledge is obviously impossible unless the known *is* known, i.e., exists in thought, in the mind which knows it, inside the knower, so to speak.[31] One must, however, beware of interpreting those expressions in a spatial sense. To exist in thought or to *be* outside of thought does not mean being in or outside the mind, spatially, as my watch may now be in my pocket and now outside of it. The expressions "in the mind" and "outside the mind" are purely metaphorical and the surest way to succeed in misunderstanding the question of knowledge is to allow the spatial imagination to intrude where it does not belong.[32] These expressions simply mean that the thing known exists in one manner or mode of existence as *a thing* and in another manner or mode of existence as *known*.[33] *What* exists in each of these modes is identical [34] — the mode of existence of that thing alone differs when it is regarded as a thing in itself and as a known thing.[35]

I hasten to add a word of warning lest the term "thing in itself" arouse Kantian associations. For Kant the "thing-in-itself" was some inscrutable entity beyond the reach of reason which only an indefensible dogmatism or an act of faith or an irrational experience could lead one to accept. It has nothing to do with the *thing in itself* of which I am speaking. The thing in itself of which I am speaking is an essence exercising an act of existence in the world of reality — actual or possible — as contrasted with that same essence exercising an act of existence in the world of knowledge. The real world is the world of the possible as well as the world of the actual. Possibles are really possible. The correlatives are not *real* and *possible* but *real* and *logical* (or mental). However, his is not the place to go more fully into that question.

An essence, as such, does not imply existence.[36] Hence it is indifferent to various modes of existence and may exist only in the mode of being which it has in the Divine Mind or only in this mode and in the mode of existence it has in itself or it may exist in both of these modes and in the mode of existence it has in our knowledge.[37] *The essence* which exists in each of those modes of existence is absolutely identical; the mode of existence which it exercises alone is different.[38] We are here face to face with the most radical of metaphysical doctrines in the philosophy of St. Thomas — the doctrine of analogy — according to which the same, identical, essence may exercise various acts of existence and thus *be* in several different ways each of which is absolutely different from the others and only in a qualified (proportional) sense the same. The *object* is analogically the same as *the thing:* it is the thing as it is objectified, i.e. made an object of knowledge.

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[29] Cognitio est secundum quod cognitum est in cognoscente (Sum. Theol. I, 16, 1, c). Dicitur animam esse quodammodo omnia, quia nata est omnia cognoscere (De Verit. II, 2, c).

[30] Cognoscentia a non cognoscentibus in hoc distinguuntur quia non cognoscentia nihil habent nisi formam suam tantum sed cognoscens natum est habere formam etiam rei alterius. (Sum. Theol. I, 14, 1, c).

[31] Cognitio non fit nisi secundum quod cognitum est in cognoscente. (I Sent. 38, 1, 2, c.)

[32] Cfr. Jacques Maritain, *Les degrés du savoir*, Paris, 1932, p. 164 f.

[33] In qualibet cognitione potest considerari duplex modus: scilicet modus rei cognitae et modus cognoscentis. . . . Unumquodque est in aliquo secundum modum ipsius. (I Sent. 38, 1, 2, c).

[34] Nec etiam apud nos desinit esse propria natura in re quae intelligitur, ex hoc quod verbum nostri intellectus ex ipsa re intellecta habet ut intelligibiliter eamdem naturam numero contineat. (Cont. Gent. IV, 14).

[35] Species intelligibilis est similitudo ipsius essentiae rei et est quodammodo ipsa quidditas et natura rei secundum esse intelligibile non secundum esse naturale prout est in rebus. (Quodlib. VIII, a. 4).

[36] Omnis essentia vel quidditas intelligi potest sine hoc quod aliquid intelligatur de esse suo facto; possum enim intelligere quid est homo vel phoenix, et tamen ignorare an esse habeant in rerum natura. (*De Ente et Essentia* Cap. IV (Ed. Roland Gosselin, Cap. V; Ed. Mandonnet, Opuscula Omnia, I, p. 157).

Thus when the mind knows the thing, what is in the mind is identical with what is in the thing.[39] Regarded from the point of view of the mind, knowledge is an act of a very special kind, an immanent act, a vital act, affecting the subject after the fashion of a quality; [40] regarded from the point of view of the thing known, knowledge is an act of the thing communicating its essence to the mind and so affecting it qualitatively. Regarded formally in itself, knowledge is a reality whose whole and sole reality consists in carrying the thing to the mind and the mind to the thing. Its being is *intentional*, *tendential*. In virtue of this immaterial, relational act of existence the thing exists in the mind in a mode of existence distinct and different from the mode of its physical existence, and the mind is or becomes the thing in a mode of existence different from its own proper mode.[41] The thing *is* in the mind *intentionally;* the mind *is* or becomes the thing intentionally. Thus the thing actually known and the mind actually knowing it are identical.[42] Until there is an affirmation of this identity, however, there is no comparison set up; therefore, strictly speaking no truth but only the principle from which truth may issue.[43] Where there is identity there can be no comparison.[44] So, a concept (which brings the essences of things within the mind but does not reach to the existence which they exercise) does not yet contain truth.[45] A comparison must be made between the act of existence which things have in the mind and the act of existence which they have in nature. Thence comes a pronouncement, a judgment, stating that the self-same essence which exists in the mind in one mode of existence, exists also, in another mode of existence, in nature.[46]

The Judgment

No thing at once reveals itself to the intelligence in the fulness of its intelligibility [47] for, the intellect by abstracting the form of the thing does not reach to the singular.[48] The abstracted forms (e.g. something, a living thing, a man, a white man, a tall white man, etc.) are separately abstracted and must be reintegrated to give to the understanding a fuller and fuller likeness to the thing. The reintegration

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[37] Omnes creaturae sunt in mente divina sicut arca in mente artificis . . . Ergo omnium rerum ideae sunt in Deo. (De Verit. III, 1, 7th sed contra). Est in eo idea etiam eorum quae nec fuerunt, nec erunt, nec sunt. (*Ibid.* III, 6, sed contra).

[38] Strictly speaking the essence does not exist but *by* the essence *something* exists "Non oportet quaerere quomodo ipsa essentia aliquo sit, sed quomodo aliquid alterum sit per essentiam," (De Verit. XXI, 4, ad 4). Thus, the essences of things in the mind of God, which are identical with the Divine Essence, are the ideas whereby *God* is *exemplariter et causaliter* all things; the essence of things in the things themselves is that whereby *they* are *realiter* what they are; the essences of things in the created mind are the forms whereby the *knowing subject* is or becomes the things known *intentionaliter*.

[39] Intellectum in actu est intellectus in actu. (Sum. Theol. I, 85, 2, c).

[40] The question of the qualitative character of immanent activity is treated at length by John of St. Thomas *Philosophia Naturalis*, III, q. 6, a. 4, and q. 11, a. 1. Cfr. Yves Simon, *L'ontologie du connaître*, Paris, 1934, p. 97 ff.

[41] Cfr. Jacques Maritain, *Les degrés du savoir*, pp. 217 ff.

[42] Cognoscens et cognitum sunt magis unum quam materia et forma. (Cajetan, *In Sum. Theol.* I, 14, 1. Leonine ed. of St. Thomas IV, p. 167).

[43] Idem non adaequatur sibi ipsi sed aequalitas diversorum est. (De Verit. I, 3.)

[44] Quamvis formatio quidditatis sit prima operatio intellectus, tamen per eam non habet intellectus aliquid aliud proprium quod possit rei adaequari: et ideo non est ibi proprie veritas. (De Verit. I, 3, ad 1).

[45] Indivisibilium intelligentia in illis est in quibus non est verum et falsum. (De Verit. I, 3, 2nd sed contra).

[46] Compositioni et divisioni intellectus respondit quidem aliquid ex parte rei; tamen non eodem modo se habet in re, sicut in intellectu. (Sum. Theol. I, 85, V ad 1). Cfr. *De Veritate* I, 3, c.

[47] Intellectus humanus non statim in prima

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apprehensione capit perfectam rei cognitionem. (Sum. Theol. I, 85, 5, c).

[48] Differt autem inter intellectum humanum et divinum; quia humanus non cognoscit directe singulare, divinus autem sic; quia cognitio fit per similitudinem cogniti in cognoscente; et haec est in intellectu nostro per abstractionem a conditionibus individuantibus et a materia, ideo . . . non cognoscit directe nisi universale. (Quodl. 12, q. 8).

The judgment is, in a measure, a compensation for the weakness of our intellectual intuition. Our minds cannot grasp the real in its totality, so we are obliged to work towards a reconstruction of the world of nature within our minds by reintegrating, the different aspects of the thing which we have apprehended separately, in the unity of physical existence. For, knowledge of what *is* comes to us piecemeal. Now we see this aspect, now that. Each separate aspect (M. Maritain would have us call them "inspects") comes to us distinct from the rest. We must gather them up — assemble them as the manufacturers of automobiles might say — and restore them to their unity in the thing by asserting that all these aspects which have come to us separately and which, by our judgment, we have combined together in the unity of mental existence, actually exist unseparated within the thing, which is the object of our knowledge, in the unity of its act of physical existence. This is, alas! a long, tedious and laborious task, for, in the last analysis it is nothing less than the whole business of acquiring knowledge. At once analytic and synthetic — in a word, discursive — its trials and its labours are without number; it is a task fraught with many difficulties, disappointments, subject to many errors and mistakes; fresh starts must constantly be made and failures must leave us still undaunted; courage and patience must combine with confidence and perseverance else we shall labour in vain.

Because the objects of our knowledge are themselves very complex; because our intellectual insight is too weak to penetrate the real in its full, rich content (for, are we not in the lowest range of the hierarchy of intelligent beings?); because we cannot understand anything but the very simplest objects without a multiplicity of concepts, errors inevitably arise. Our effort to put things together in judgments is much like trying to solve a jig-saw puzzle. The danger of error is always immanent. So many parts look alike when they are not alike; we are constantly putting the wrong parts together and we have to watch attentively each step we take; sometimes we do not detect our mistakes until we have finished the picture and find that we still have some pieces left over. We must go back again over our work and check each decision again and again. Similarly in our efforts to acquire true knowledge we must frequently retrace our steps and check our progress. This is a true critique of reason, one quite different from that which Kant proposed.

Only when the mind is in the presence of the most simple things, things which possess no complexity whatsoever, can it grasp its object with absolute certainty and without danger of error. In the apprehension of appropriate intelligible forms the intelligence is infallible and it cannot go astray. But as soon as it begins to combine and divide in judgments the danger of error arises. Judgments must be constantly checked by apprehensions for the judgment is an instrument of knowledge in the service of simple apprehension and must therefore be controlled by it.

The basic reason for this imperfect and, I dare say unsatisfactory, condition at the very heart of our highest and noblest knowledge, knowledge completed in the judgment, is one that is inherent in knowledge itself, God's knowledge and the knowledge of the blessed in heaven alone excepted; it is that knowledge does not give possession of the thing known in all the fulness of its being. Being — the real (actual or possible) existence of the thing known is indeed asserted, affirmed, recognized, corroborated by the judgment and the mind is thus carried by knowledge to the object in its actual existence, yet the thing thus known is not grasped, held, embraced, possessed in its own proper, physical existence but in its essence existing in a conceptual mode of being. Intellectual knowledge, although it be knowledge of what is, *ad extra*, in the world of real existence, is knowledge of its object as it exists in intentional existence, *prout est intra*. That which is known is identical with that which is, but its mode of existence in knowledge is not identical with its mode of existence in the physical world. Even sensation does not fully compensate for this imperfection for, although it puts us in immediate contact with the real existing in its own proper existence, reveals only phenomenological aspects of the thing. In this life, the intellect knows what *is* only by means of concepts. Moreover, in spite of the fact that the concept is a *medium quo* (and therefore does not interpose itself between the mind and the thing as an object known but simply and solely leads the mind to the thing) it is nevertheless always vicarious in respect to the thing in itself and mediatory in respect to the knowledge of it. John of St. Thomas points out that a pure *medium quo* or formal sign does not make our knowledge mediate *mediatione objecti cogniti* but *mediatione formae informantis*. For this reason our knowledge is not a knowledge of concepts but of things by means of concepts.

In knowledge, then, the knowing subject possesses the essence, form or whatness of the thing known and is perfected, i.e. given a greater amplitude of being, by that acquisition but by knowledge the knowing subject does not grasp the object in its proper physical existence. Could the subject reach still further and grasp of these forms in the unity of the object is the work of judgment.[49] The judgment thus essentially consists in affirming the existence (in the unity of real existence) of a thing in which two concepts united by the mind (in a unity of intentional existence) are actually or possibly realized. This is the composition and division effected by the judgment. Thus does the judgment reach out to being (existence) and affirms that certain essences actually or possibly exist. It is here that the relation of truth or correspondence enters in. Truth is in the mind — in the act of combining and dividing — in the judgment.[50] To judge is to combine or to divide, to put together or to set apart, to affirm or to deny that two forms or essences which have been separately abstracted and which, therefore, up to the time or moment of judgment, have existed as two separate concepts in the mind, must be put together or set apart, as the case may be. It is true to speak of the judgment as the act of combining or dividing concepts only when one bears in mind that the term *concept* in this context means the *objective concept*, i.e. the thing or essence which is known and which, therefore, exercises, and in as much as it does exercise, an act of existence in the intentional mode of being.[51] Truth is in the judgment when the act of judging puts to-

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the thing in its own proper existence, the perfective power of reality with respect to the rational subject would be more complete, for, it would then give perfection both through its essence and through its existence. It is this further fulfilment of the perfective power of reality which is effected by the good.

Truth, we have repeated again and again, is a relation, a correspondence. It is such, however, that it cannot strictly be said to exist in things but rather in the mind. Good, too, is a relation but it is in things. Things are true in a mind but they are good in themselves; for, truth results from the essence being known while good is in the very being (*esse*) of what is. Knowledge, we have said, is not complete until the mind *sees* the identity of the essence existing in two different modes and thus achieves truth, i.e. recognizes that *what* it possesses in knowledge is identical with *what* is held in physical existence by the thing itself. The fulness of knowledge is therefore only achieved when the mind reaches out to the *esse* of its object as a physical being. But knowledge cannot grasp that *esse* in itself, it can only see that what has that *esse* is the same essence which has *esse* in thought. Through the good, however, we are put in touch with beings as they exist in their own proper *esse.*

[49] (Intellectus humanus) primo apprehendit aliquid de ipsa (re) puta quidditatem ipsius rei, quae est primum, et proprium objectum intellectus; deinde intelligit proprietates, et accidentia, et habitudines circumstantes rei essentiam et secundum hoc necesse habet unum apprehensum alii componere, vel dividere et ex una compositione, vel divisione ad aliam procedere. (Sum. Theol. I, 85, 5, c).

[50] Cfr. De Verit. I, 3, c; Sum. Theol. I, 16, 2.

[51] Through knowledge as completed in the judgment, the intellect attains the object both in its essence and in its existence. But, the object has a twofold existence modally distinct, one in the order of its individual reality (*esse naturale*), the other in the order of its universal intelligibility (*esse intentionale*). The judgment pronounces that the thing which exists in the intentional mode is identical with the thing which exists in the physical mode, or, if you will, that the thing is in itself as the intellect judges it to be. Of course the judgment is made in the mind, by the mind, and it does not exist in the thing itself. It is an affirmation (*synthesis*) or a denial (*diaeresis*) made within the mind, by the mind, in which it is asserted (or denied) that what is combined (or separated) by the mind exists (or does not exist) outside the mind, in the unity of one physical act of existence. The possibility of thus performing by the mind and within the mind an act which has validity in the realm of physical existence outside the mind, *in rerum natura*, is rooted in the nature of the concept. It is through the concept that the object exists in the intelligence, or more precisely, the concept is that by which the mind *becomes*, in its way, what the thing *is*, in its way. Of its very essence, the concept is relational; its whole reality is comprised in the referential tendency by which it carries the mind to its object and the object to the mind, making the known and the knower identical in the act of knowing. In other words the concept is a pure formal sign (a *quo*, not a *quod*). The act of judgment does not combine two concepts, for they are not things (*res quae*) *which* are susceptible of being combined, but simply *by which* (*quibus*) things are in the mind, and may be combined by the mind. Whether or not the combination which the mind makes is a valid combination, that is, whether it corresponds to the way in which things exist in themselves outside the mind, cannot be decided by the intellect which judges them to be so, for the intellect does not possess them in their physical existence but must be tested by reference to the experience of the senses, wherein direct contact is had with the world of physical existents. The appeal to sense experience is direct and immediate when it is a question of a judgment bearing on actual existence; it is indirect and mediate when the judgment asserts possible existence, the direct and immediate appeal being to the intellectual intuition of the first principles of being.

gether what should be put together and (or) sets apart what should be set apart. The judgment is erroneous, false, when it puts together what should be set apart and (or) sets apart what should be put together. So to judge truly is to say of what is, that it is and of what is not, that it is not. Here, then, is where we find truth: in the act of equating what is in knowledge with what is in nature; or, in more technical terms, in the affirmation of the identity of the essence existing intentionally in the intellect, with the essence existing physically in the thing. Thus to judge is to affirm the unity, in the nature of things, of two essences which, having been separately presented to the mind in two concepts, are united by the act of judgment affirming their coexistence in the same object. When these two forms or essences coexist (actually or possibly) in the same object then the judgment is true; when they do not so coexist, the judgment is not true. Truth, therefore, — the equation of what is in knowledge with what is in nature is found in the judgment and in the judgment only.

When what is in nature becomes present in knowledge by simple apprehension, truth is there *in actu primo*, in principle; but to effect the equation or correspondence between what is in nature with what is in knowledge, an act is necessary to carry knowledge to its term and so reach truth *in actu secundo*. When the concepts 7 and 5 are presented to the mind and juxtaposed in the concept $7+5$, the sum, 12, is there *in actu primo* but it is only when the judgment $7+5=12$ is made that the sum twelve is present *in actu secundo*. The concept $7+5$ is in itself neither true nor false. The judgment $7+5=12$ is true. But $7+5$ has in itself that whereby I can proceed to equate it with 12. It has truth *in actu primo*, is the principle from which arises the truth *in actu secundo*, the term of the judgment The act of equating, judging, must intervene before I can say, "It is true," or "It is false."[52]

This act of judging is something which the intellect possesses but which is not in the thing. Corresponding to this act of judgment, there is in the thing an act whereby an essence exists (actually or possibly) so that the judgment consists in making the following equation:

$$\frac{\textit{Form in intellect}}{\textit{Intentional being}} :: \frac{\textit{Form in thing}}{\textit{Physical being}}$$

To put this into words: the judgment is an act whereby the intelligence affirms the actual or possible real existence of a thing in which, what the mind unites in *esse intentionali* are one in *esse physicum:* thus, the same thing is affirmed to be, or to have being, in two modes of existence — one in mind (*intentionale*), one in nature (*physicum*) — proportionately (according to proportionality) to the respective modes of its existence and in conformity with the conditions of its modes of existence. The correspondence, therefore, or the conformity affirmed by the judgment is not an identity in mode of existence but an identity in the analogical act of being. The thing known exercises an act of existence in the world of reality and at the same time in virtue of the judgment exercises an act of existence in the world of thought. What is known is identical in each of these two realms and, by the act of judgment, the mind affirms that identity, or if you will, gives existence in the order of thought to what exists in the order of nature by uniting in thought what is one in nature but what has come to the mind under two separate aspects, in two distinct concepts. "Man is mortal" does not mean that the concept man is the concept mortal, but that the same thing presents itself to the intelligence by the concept man and by the concept mortal and that thing, presented to the mind by these two concepts, is identical with itself in the mode of existence it exercises in the real world and in the mode of existence given to it by the judgment in the world of knowledge. Thus, if the thing is, or has being, in nature as the judgment says it is, or gives it being in thought, then truth is had, for then there exists an equation, a conformity, a correspondence, between the being which the thing has in the world of reality and the being which it receives in the world of knowledge — *adaequatio rei et intellectus*. Up to the moment when the mind makes the judgment there is no comparison between what is in the mind and what is in nature. In the act of knowledge the object and knowledge of the object are simply identical and no comparison is possible. It is only when the mind pronounces that the act of existence which the object exercises in the thing known and the act of existence which it exercises in knowledge are analogically the same — i.e. that it is the same essence existing in two diverse modes of being — that a comparison arises, that an *adaequatio* is present, that what is, *is said* to be.

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[52] By simple apprehension a relation is established between the essence or form of the thing known and the mind knowing: in the judgment this relation is completed going beyond the *essence* to the *existence* of the thing. (Prima operatio respicit quidditatem rei; secunda respicit esse ipsius. I. Sent. D. XIX. q. 5, a. 1, ad 7). Thus, knowledge in simple apprehension is knowledge *in actu primo*, knowledge in judgment is knowledge *in actu secundo*.

Thus the judgment *completes* knowledge.[53] The act of judgment springs from the mind itself. It is not, as Kant would have it, the imposition of a form upon a matter. The union of matter and form gives rise to a third thing which is neither the matter nor the form. It is the union of these two metaphysical elements which presides over production. But knowledge is not a *production* (although in our knowledge a concept is produced as a means whereby knowledge is had) but a *mode of being*. Nothing new is produced or made but the subject knowing perfects itself by becoming what other things are. Judgment, therefore, is a spontaneous, vital act originating in the intelligence and perfecting the intelligence, an immanent act, producing nothing outside the agent, but giving existence in the intelligence to what hitherto existed only in the nature of things (and, of course, in the mind of God). Through it the intelligence *lives* what it knows. Through it the intelligence becomes in an immanent fashion what is in the real world of nature. The forms of things other than itself are vitally assimilated by the intelligence and the intelligence, living those assimilated forms, bestows upon them its own life and so raises them to the level of itself. The things of earth thus elevated to the life of the intelligence receive a new and vital existence analogous to their existence in the mind of God. In the divine mind essences live the very life of God and from His mind they issue into their own existence. By our knowledge the things of creation are rescued from their inanimate existence and made to live again in our minds, that, living there they may be made to praise their Maker.

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[53] Although the object known (the thing existing in the cognitional or intentional mode) is identical with the physical thing itself existing in its own proper being, the identity of the object known and the existing thing is not necessarily complete or total in all respects. For example, in the judgment expressed in the proposition "Man is mortal" the being which corresponds to the concept *man* is identical with the being which corresponds to the concept mortal. But the identity is not absolute. Humanity and mortality are not identical. For, besides men, there are other things which are mortal; and, moreover, man is not only mortal but also rational, two-legged and, it has been said, laughable (*risibilis*). If the *whole being* of the thing which exists in its own proper existence were objectified in the concept (i.e. made an object of knowledge), then the identity of the thing itself and the concept of the thing would be complete and entire. But, the things which exist in the world of physical reality do not reveal their whole being (all that they are) all at once to the intelligence. Human knowledge is abstractive and all knowledge, save that of God alone, is partial. To comprehend the whole being of even the meanest thing on earth requires an infinite intelligence. Recall what Tennyson said about the flower in the crannied wall,

Little flower, but if I could understand
What you are, root and all, and all in all,
I should know what God and man is.

And is it not in the same sense that Maritain says, "comme si en ouvrant un brin d'herbe on en faisait sortir un oiseau plus grand que le monde"? Because God is all things by His very essence He knows all things and His knowledge is exhaustive of being. But the human mind can only take the forms (the *rationes*) of the things of nature revealed to the intelligence in the light of the active intellect, and by a vital, immanent act of judgment, by combining and separating them, give to them (or refuse to them) a composite existence within the mind by affirming (or denying) that what is one is likewise the other. We, poor human creatures, can do no more than this by our minds. By our best sort of knowledge, knowledge completed in judgment, we can only give to the essences of things existence within the mind and then, by comparing our work with the things which God has made (when the judgment affirms actual existence) or with the order of truth which He has established in the very being of things (when the judgment affirms possible existence), test the work of our minds and discover thereby whether we have judged truly or falsely.

They have issued from the mind of God by the act of creation and by knowledge they come into our minds to receive, through the judgment, our confirmation of the creative act whereby they were made to be. There is thus an analogy between the act of creation and the act of judgment. When we judge we affirm, declare, assert, and our judgments are, grammatically speaking, expressed in the indicative mood; when God judges He does not merely affirm that a thing is such and such but by that affirmation makes it to be such and such if it were not such before. His judgments are in the imperative mood — *Fiat!* not *Est.*

I might say "This paper is pink" when really it is white. And I should err. But, should God say, "This paper is pink" it would then be pink even though up to that moment it had been white, — it would become pink, — for the judgment of God cannot err and when He says a thing is so, it is so, even though in order to be so it must come into existence or change from what it was before. This is what is meant by saying that God's judgment is a *fiat!* not an *est.* If God were to judge that this paper is white, His judgment would be no less a *fiat!* because it is white only because He constantly gives to it the very being whereby it is, is white, is smooth — in a word, is all that it is. Thus God's act is to give being — *dare esse* — His judgment is *est* only because it is *fiat!* Our judgments support, confirm, affirm that gift. When God says "Let it be so!" we say "So it is." Judgment is in a sense our corroboration of creation. Yet it is a humble act because it is God's work which we acknowledge. To withhold our affirmation of the work of His hands would be pride. To give it is to rescue inanimate things from their lifeless condition and make them live again in our mind and there praise the God Who made them. *Caeli ennarrant gloriam Dei* — only when the heavens are known and through our knowledge give to God the glory which is at once the spontaneous uprush to the realm of act of our deepest potentialities and a hymn of praise and adoration to God.

The "Summa de Officiis Ecclesiae" of Guy d'Orchelles

V. L. KENNEDY, C.S.B.

A. Introduction

1. THE MANUSCRIPT

MS. LAT. 17501 of the Bibliothèque Nationale of Paris is a late thirteenth century volume from the Cluniac monastery of Saint Martin-des-Champs.[1] Written in a regular Gothic hand on 169 vellum sheets, with one column to the page (312 mm x 215 mm), the manuscript contains two treatises, one dealing with the sacraments, the other with the offices of the church:

1. f. 1^{r}: Legitur in Exodo capitulo xxv quod Dominus praecepit Moysi. . . .
f. 139^{v} . . . qui est finis laborum nostrorum et actor et consummator fidei nostrae Jesus Christus qui cum Patre et Spiritu Sancto vivit et regnat Deus per omnia saecula saeculorum. Amen.
2. f. 140^{r}: DE OFFICIIS ECCLESIAE. In libro de Trinitate dicit Boetius quod in naturalibus rationabiliter. . . .
f. 169^{v} . . . Ne vero prolixus tractatus aures legentium fastidiat finem hic facimus a retributore omnium operis praemium exspectantes. Explicit Summa Magistri Guidonis de Orchellis.

Attention was first drawn to this manuscript in 1885 by Barthélemy Haureau in the *Histoire littéraire de la France* where he briefly analysed the treatise *De officiis*, praised the style of the author and characterised the work as *grave et substantiel*.[2] In 1892 Haureau again dealt with this manuscript, in the fifth volume of his *Notices et Extraits;* here he points out that the first part, the treatise on the sacraments, is undoubtedly by the same author since the two works are of the same period and written in the same style.[3] Since that time, the manuscript has been commented on by Monsignor Grabmann,[4] and it is listed by Father Glorieux as the unique source of the *De officiis*.[5]

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[1] The following description of the manuscript was furnished by the Office de Documentation, Bibliothèque Nationale, Paris: "Manuscrit Latin 17501. Parchemin. 169 feuillets mesurants 312 sur 215 millimètres, écrits à longues lignes (1 colonne) d'une lettre de grand module datant d'environ 1275. Rubriques. Initiales alternativement rouges et bleues. Ce manuscrit provient de l'Abbaye de Saint-Matin-des-Champs, ainsi qu'en témoigne un *ex-libris* gravé aux armes de cet établissement, collé sur le plat supérieur de la reliure. Il est revêtu d'une demi-reliure dont le dos, en basane, est dans un état déplorable, et dont les plats sont recouverts de feuilles de parchemin qui *semblent* provenir d'un recueil de sermons du XIV^e siècle. Il a été impossible de rien établir en ce qui concerne l'histoire du manuscrit avant son entrée à Saint-Matin-des-Champs. Son transfert de cette abbaye à la Bibliothèque Nationale remonte à l'année 1795."

[2] *Histoire littéraire de la France*, vol. xxix (Paris, 1885), pp. 612–614.

[3] B. Haureau, *Notices et extraits de quelques manuscrits de la Bibliothèque Nationale*, vol. v (Paris, 1892), pp. 284–285.

[4] M. Grabmann, *Die Geschichte der scholastischen Methode*, vol. 2 (Freiburg im Breisgau, 1911), pp. 487–488.

[5] P. Glorieux, *Répertoire des maîtres en théologie de Paris*, vol. 1 (Paris, 1933), p. 285.

2. THE AUTHOR

The final line of our manuscript assigns the treatise, *De officiis ecclesiae*, to Guy d'Orchelles: *Explicit Summa Magistri Guidonis de Orchellis.* Very little is known of this Magister Guido; in fact only one contemporary reference to this theologian has been noted so far, — the remark of Etienne de Bourbon, a thirteenth century Dominican, in his *Tractatus de diversis materiis praedicabilibus:*

> Audivi a magistro Guidone d'Orchuel doctore theologico Parisius, quod, cum quidam philosophus. . . .[6]

Now we know that Etienne de Bourbon came to Paris as a student about the year 1217 and left the French capital in 1223 never to return;[7] hence we are sure that Master Guy was lecturing at Paris at this period. Assuming that he was a Master in 1220, he must have been born before 1185 to be of canonical age for the post;[8] as his name implies he was a native of the small hamlet of Orchell (Orchuel, Orchels) which has been identified with Orcheux (Oise).[9]

A fortuitous discovery enables us to fix approximately the date of his death. The Obituary of the Cathedral of Meaux, begun about the year 1230, contains the following record written by the first hand:

> xiiii kal. Oct. [Sept. 18]
> Obiit magister Guido de Orchels, canonicus Meldensis qui dedit canonicis beati Stephani sexdecim libras pruvinensium ad emendos redditus in anniversario suo distribuendos annuatim. [*Then added by a second hand:*] pro quibus reddunt matutine quatuordecim solidos annuatim.[10]

We must then place Guy's death about the year 1230. We cannot, of course, assume from this notice that he actually died at Meaux even though he is listed here as a canon of that city; in all probability he held the canonicate throughout his career as Master.[11] However, there are some indications that he actually ended his days as a canon of the cathedral of his native diocese. He seems to have been still teaching at Paris towards 1226–1229;[12] if he were still there in the spring of 1229 when the strike of the masters and scholars closed the University,[13] he would probably retire to his canonicate at Meaux. Two isolated facts, of minor importance in themselves, tend to confirm this assumption: (a) his name does not appear in any of the Parisian obituaries of the period — had he died before 1229 while still holding his mastership, his name would, more than likely, be found in one of the Parisian necrologies; (b) he leaves his little fortune to his fellow canons of Saint Stephen's — an indication of personal interest in the affairs of the local chapter. Until such time as further evidence comes to light, we may reasonably presume that Guy d'Orchelles died at Meaux September 18, 1229 or 1230.

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[6] A. Lecoy de la Marche, *Anecdotes historiques, légendes et apologues tirés du recueil inédit d'Etienne de Bourbon* (Paris, 1877), p. 16.

[7] Lecoy de la Marche, *op. cit. Introduction*, pp. v–xi.

[8] A master in theology had to be thirty-five years of age; cf. the regulation imposed by the Cardinal Legate Robert de Courson, August 1215: *Circa statum theologorum statuimus quod nullus Parisius legat citra trigesimum quintum etatis sue annum . . . Chartularium Universitatis Parisiensis*, ed. Denifle, vol. 1 (Paris, 1889), p. 79.

[9] So identified by Lecoy de la Marche, *Anecdotes historiques*, p. 16; Glorieux, *Répertoire des maîtres*, p. 285. For the modern Orcheux, cf. *Documents rélatifs au comté de Champagne et de Brie*, ed. A. Longnon, vol. 1 (Paris, 1901), p. 696.

[10] *Obituaires de la Province de Sens* (*Recueil des Historiens de la France, Obituaires*), vol. iv (Paris, 1923), p. 96. For the date, cf. pp. 1–2.

[11] For permissions granted by the Holy See at this period for scholars and masters to be absent from their benefice, cf. P. Hinschius, *System der Katholischen Kirchenrechts*, vol. 3 (Berlin, 1883), p. 224, n. 1 and 2.

[12] Cf. Glorieux, *Repertoire des maîtres*, etc., vol. 1, p. 285. This assumption is apparently based on the fact that his name appears in Ms. Douai 434 which contains a series of *Quaestiones* of the Parisian masters from cir. 1225 to cir. 1235. On the content of this Ms. cf. O. Lottin, "Quelques 'Quaestiones' de maîtres parisiens aux environs de 1225–1235," *Recherches de théologie ancienne et médiévale*, V (1933), 79–95.

[13] Cf. S. d'Irsay, *Histoire des universités françaises et étrangères*, vol. 1 (Paris, 1933), p. 72.

Judging from the few discoveries made by modern scholars, Guy d'Orchelles was not a prolific writer. In addition to the treatise on the offices of the church assigned to him by the scribe of Ms. Lat. 17501, he is generally accepted as the author of the *Summa de sacramentis* found in the same manuscript,[14] and apparently to him also belong two *Quaestiones disputatae* of Ms. Douai 434.[15] In any case we have no reason to reject Guy's authorship of the *De officiis*. The date of the manuscript shows that the treatise is at least earlier than the third quarter of the thirteenth century, and, as will be seen below, a study of the sources demonstrates that it is posterior to the work of Praepositinus of Cremona, chancellor of the University of Paris from 1206 to 1210. This chronology concords satisfactorily with the period of activity of Magister Guido, doctor theologicus Parisius, canonicus Meldensis.

3. THE SOURCES

The adoption of the Roman rite by the church of France was definitely assured by the legislative measures of Charlemagne and his successors, who, to secure uniformity of practice, insisted that the clergy not only use the new service books but also that they be well instructed in the ceremonies and rubrics of the Roman practice.[16] To meet this need there appeared two types of liturgical literature in the ninth century: (1) Collections of *Ordines Romani* describing the ceremonies; (2) didactic explanations of the Mass and the sacraments. This second type took two forms: (a) small individual tracts on the Mass (*Expositio missae*) [17] and on certain sacraments particularly baptism;[18] (b) compilations dealing with the whole field of liturgy, veritable *Summae* treating the Office, the Mass, the ecclesiastical year, the sacraments, the various orders, the vestments, etc.

The first liturgical *Summa* of Carolingian times was composed by Amalar of Metz (d. cir. 850) who attempted to explain not only what was to be done during the Mass and on the chief festivals of the year but also why it was done.[19] Probably because of his lack of historical information, Amalar gives, as a rule, a mystical or symbolical interpretation of the ceremonies. He is not the originator of this type of work since he had at hand a model: the *De officiis* of Isidore of Seville.[20] Amalar's work which appeared in two editions during his lifetime became in turn the model and main source of inspiration for his successors. It is true that he was not particularly acceptable to his contemporaries; other ninth century writers, such as Rhaban Maur,[21] Walafrid Strabo [22] and Florus of Lyons,[23] have little to do with his explanations; but Amalar, and not they, was to influence succeeding generations.

The Amalarian ideas permeate the writings of the tenth and eleventh century liturgists, Pseudo-Alcuin,[24] John of Avranches,[25] Frutolf of Michelsberg.[26] The one writer of the period who shows originality is Bernold of Constance;[27] a protagonist of the papacy in its dispute with the empire, Bernold's knowledge of the church councils enables him to treat the liturgy from the historical viewpoint. His treatise was an excellent practical handbook for the clergy and was widely used;[28] it seems to have had little influence, however, on subsequent writers.

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[14] In addition to Haureau, Grabmann and Glorieux (cf. *supra*, p. 23), Dom O. Lottin assigns this treatise to Guy. Cf. *Bulletin de théologie ancienne et médiévale*, vol. 1, no. 131 and 1146; vol. 2, no. 985.

[15] Cf. note 12 above.

[16] Cf. M. Andrieu, *Les Ordines Romani du haut moyen âge*, vol. 1, *Les Manuscrits* (Louvain, 1931), pp. 467–468; 476–481.

[17] A. Wilmart, *Expositio Missae, Dict. Arch. Chrét.*, vol. V, cols. 1014–1027.

[18] Cf. Andrieu, *op. cit.*, p. 479.

[19] *De ecclesiasticis officiis libri quatuor;* P. L. 105, 968–1242; cf. J. M. Hanssens, "Le texte du Liber Officialis d'Amalaire," *Ephemerides Liturgicae*, xlvi (1933), 113–125, et seq.

[20] *De ecclesiasticis officiis;* P. L. 83, 737–826.

[21] *De clericorum institutione;* P. L. 107, 293–420. Also edited by A. Knoefler (Munich, 1900).

[22] *Liber de exordiis et incrementis . . . rerum;* P. L. 114, 919–966. Also edited by A. Knoepler (Munich, 1905).

[23] *Opusculum de actione missae;* P. L. 119, 15–72. *Opusculum adversus Amalarium;* P. L. 119, 71–94.

[24] *De divinis officiis liber;* P. L. 101, 1174–1286. The unknown author composed his work between 900 and 950; cf. M. Andrieu, "L'Ordo Romanus antiquus et le Liber de divinis officiis du Pseudo-Alcuin," *Revue des sciences religieuses*, V (1925), 642–650.

[25] Delamare, *Le De officiis de Jean D'Avranches* (Paris, 1923).

[26] *De divinis officiis*, unpublished; to be found in Ms. Bamberg Ed. V, 13; cf. H. Bresslau, "Bambergen Studien," *Neues Archiv*, XXI (1896), 223–225.

In the twelfth century, German liturgical writers continue the Amalarian tradition; Honorius of Autun[29] and Rupert of Deutz[30] are exceedingly prolix and quite unoriginal. The former is little more than a collector of "sentences";[31] the latter is a theologian of the old school bitterly hostile to the new dialectical movement.[32]

As a general rule, however, there is a distinct change in the character of the liturgical treatises of the twelfth and thirteenth centuries. The introduction of the use of dialectics in the study of theology and the interest shown in the liturgy by the theologians of this period led to a more systematic treatment of the rites of the church. The liturgy is now examined *theologicis rationibus*, though the Amalarian symbolism does not entirely disappear. The originator of this new tradition is apparently the Parisian theologian, John Beleth,[33] a product of the school of Chartres and a disciple of Gilbert de la Porée.[34] His explanation of the liturgy is, for the most part, sane and simple; the rites of the church are described in detail and interpreted in the light of history, reason and revelation.[35] Beleth's *Rationale* becomes in its turn the chief source for subsequent writers: Sicard of Cremona,[36] Praepositinus,[37] chancellor of the University of Paris, William of Auxerre.[38] Of these three, Praepositinus is of particular importance, for, though he used Beleth's work to a great extent, he apparently found the explanations of Amalar and Honorius of Autun more to his taste;[39] thus he combined the new "rational" method with the old Amalarian tradition. The *Tractatus de officiis* of Praepositinus is the main source of the great liturgical summa of the Middle Ages, the *Rationale divinorum officiorum* of William Durand,[40] bishop of Mende (d. 1296).

Where does Guy d'Orchelles fit into this picture? It is no easy task to determine all the sources used by a mediaeval liturgist owing to the repeated borrowings and mutual dependence of preceding writers. However Guy himself furnishes us with a key to the problem. In dealing with the question of the suppression of the joyful canticles on the feast of the Holy Innocents, he mentions the opinions of John Beleth and Peter Manducator:

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[27] *Micrologus de ecclesiasticis observationibus;* P. L. 151, 973–1022.

[28] Some 45 manuscripts of this work are known to the writer who hopes to edit a critical edition of this important treatise.

[29] *Gemma Animae*; P. L. 172, 541–738. *Sacramentarium; ibid.*, 737–814.

[30] *De divinis officiis per anni circulum libri XII;* P. L. 170, 11–332.

[31] Cf. G. Paré, A. Brunet, P. Tremblay, *La renaissance du xii^{e} siècle: Les écoles et l'enseignement* (Ottawa, 1933), p. 248. J. de Ghellinck, *Le mouvement théologique du xii^{e} siècle* (Paris, 1914), pp. 81–82.

[32] Cf. Paré, etc., *op. cit.*, pp. 187–188. de Ghellinck, *op. cit.*, p. 88.

[33] *Rationale divinorum officiorum;* P. L. 202, 13–166. Most manuscripts give the title: *Explicatio divinorum officiorum.*

[34] Cf. A. Clerval, *Les écoles de Chartres au moyen-âge* (Chartres, 1895), pp. 186–187.

[35] For other writers of the twelfth century, none of whom had any subsequent influence, cf. L. Eisenhofer, *Handbuch der Liturgik*, vol. 1 (Freiburg, 1932), pp. 126–127.

[36] *Mitrale seu de officiis ecclesiasticis summa;* P. L. 213, 14–432.

[37] *Tractatus de officiis;* unpublished. The treatise is described and its content outlined by G. Lacombe, *Prepositini Cancellarii Parisiensis* (1206–1210) *Opera Omnia:* 1. *La vie et les oeuvres de Prévostin, Bibliothèque Thomiste*, XI (Le Saulchoir, 1927), pp. 73–103. Thanks to the kindness of Professor James Corbett of Notre Dame University, I had available for this study photostats of the Salzburg manuscript of this work (St. Peter's, vi–32).

[38] *Summa de officiis ecclesiasticis;* unpublished. The treatise is described and its content outlined by Father R. M. Martineau, "La 'Summa de officiis ecclesiasticis' de Guillaume d'Auxerre," *Etudes d'histoire littéraire et doctrinale du xiii^{e} siècle*, 2^{e} série (Ottawa, 1932), pp. 24–58.

[39] For the sources used by Praepositinus, cf. Lacombe, *La vie et les oeuvres*, etc., pp. 84–103.

[40] Lacombe, *op. cit.*, pp. 81–83. Apparently Durand made use also of the *Summa* of William of Auxerre; cf. Martineau, *La "Summa de officiis*," etc., pp. 51–53.

> Manducator in Historiis dicit . . . quod tam Manducator quam Joannes Beleth qui de officiis ecclesiae tractavit. . . .[41]

In fact, we find that he uses Beleth repeatedly and Manducator frequently. Sometimes the borrowing is done almost word for word, as for instance:

f. 145^{v}	Manducator, *Historia Scholastica in Evangelia*, c. 11
Ad quod dicendum quod cum Herodes de nece puerorum disponeret per epistolam citatus est a Caesare Augusto ut iret Romam accusationi filiorum suorum responsurus. . . .	Herodes autem cum de nece puerorum disponeret, citatus est per epistolam ab Caesare Augusto ut Romam iret accusationi filiorum responsurus. . . .[42]
f. 144^{v}	Beleth, *Rationale*, c. 70
Quaeritur ergo, cum passio beati Stephani facta fuerit in Kal. Aug. eo videlicet die quo celebratur ejus inventio, et inventio . . . fuit in crastino nativitatis dominicae cur officia eorundem ita permutavit ecclesia. Ad quod dicimus quod festum de morte Stephani dignius est quam festum de inventione et ideo in digniori loco ponitur juxta Christi nativitatem. Iterum alia causa: Stephanus post mortem Christi primus martyrium sustinuit . . . unde in ejus legenda legitur: Heri natus est Christus in terra ut hodie nasceretur Stephanus in caelis.	Sed ignorandum non est passionem beati Stephani factam fuisse in Aug. illo die quo ejus celebratur inventio; econtra inventionem ejusdem fuisse postero die nativitatis Domini. Verum enimvero cum dignius et praestantius sit festum passionis inventione, idcirco translatum est ad tempus Natalis Domini. . . . Poterit tamen et alia ratio, quoniam Stephanus post Domini passionem pro Christo primus martyrium perpessus est. . . . Unde etiam est quod in ipsius vita legitur: Heri Christus natus est in terris ut Stephanus hodie nasceretur in caelis.[43]

In most instances, Guy is content to take the idea expressed by Beleth or Manducator and clothe it in his own language and style. In general he follows quite closely Beleth's plan, explaining the seasons and feasts in succession from Advent to the feast of Saint Martin. He differs from his model, however, in that he fails to comment on the ceremonies of the Mass and the various clerical states, no doubt because he had already touched on these in his treatise on the sacraments. Guy supplements and improves the explanations of Beleth by having recourse to the scriptural commentaries of Peter Lombard [44] and Peter Manducator, particularly the *Historia Scholastica* of the latter. As a matter of fact it would be more extraordinary if we did not find evidence of the use of these authorities in the work of an early thirteenth century master.

There is some reason to believe that Guy d'Orchelles knew and used the works of Praepositinus, the Parisian Chancellor, particularly his *Tractatus de officiis*. In the following example he appears to be using the *Summa theologica* of Praepositinus rather than the *De officiis:*

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[41] f. 145^{v}. cf. text, *infra*.

[42] P. L. 198, 1543.

[43] P. L. 202, 77.

[44] Evidence of this will be shown in the notes to the text. On the work and influence of Peter Lombard, cf. J. de Ghellinck, *Le mouvement théologique du xii^{e} siècle* (Paris, 1914), p. 126, et seq. On the rôle played by the *Historia Scholastica* in the study of theology at the University of Paris, cf. G. Lacombe, "Studies on the Commentaries of Cardinal Stephen Langton," *Archives d'histoire doctrinale et littéraire du moyen âge*, V (1930), pp. 18–19. For the works of Manducator, cf. R. M. Martin, "Notes sur l'oeuvre littéraire de Pierre le Mangeur," *Recherches de théologie ancienne et medievale*, III (1931), 54–66. A. Landgraf, "Recherches sur les écrits de Pierre le Mangeur," *ibid.* 341–372.

f. 144^{v}–145^{r}	Praepos. *De officiis*, ms. Salz. vi, 32, f. 7a	Praepos. *Summa Theologica*, ms. B. N. lat. 14526, f. 41d
Tertia vero ratio quare permutavit ecclesia quia sunt tria genera martyrum; primum est voluntate et opere et hoc dignius, secundum est voluntate et non opere et hoc minus dignum, tertium est opere et non voluntate et hoc infimum. Permutavit ergo ecclesia ut haec tria martyria ex ordine equerentur.	. . . de his tribus hanc rationem quia triplex est martyrium: martyrium passionis et voluntatis ut Stephani, voluntatis et non passionis ut Joannis, passionis et non voluntatis ut Innocentium. Primus est excellentius, postea secundum; idcirco secundum hunc ordinem haec tria festa posita sunt.	sunt autem tria genera martyrii; quidam voluntate et passione ut Stephanus quidam voluntate tantum ut Joannes; quidam passione tantum ut Innocentes Primum ergo dignius secundo, secundum tertio. Inde est quod illa tria festa posita sunt post festum Natale Domini juxta ordinem suae dignitatis.[45]

In the following case he was apparently using the *Tractatus de officiis* directly:

f. 164^{r}	Praepositinus, *De officiis*, ms. Salz. vi, 32, f. 35a
Postea videndum est de letaniis. Est autem una major quae fit in festo beati Marci quae ideo dicitur major quia instituta est a majore, id est a beato Gregorio scilicet pro peste inguinaria, qui de ecclesia beati Petri vidit angelum Dei super castra Crescentiae tergentem gladium suum a sanguine; ex qua visione intellexit plagam cessasse.	Dicitur autem major letania quia a majore instituta est, videlicet a beato Gregorio . . . quia Romani moriebantur peste inguinaria . . . et cum surgeret ab oratione vidit super castrum Crescentiae angelum ingentem gladium tenentem et intellexit quod cessasset quasatio.

Another example of the dependence of our author on Praepositinus may be seen in the explanation given of the fourteen-week spaces that intervene between the Quarter Tenses:

f. 154^{v}	Praepositinus, *De officiis*, ms. Salz. vi, 32, f. 37a
Quaeritur ergo cur ab uno jejunio in aliud computentur xiiii septimanae, v. g. a prima Martii septimana usque ad secundam Junii sunt xiiii septimanae computatis extremis, Similiter a secunda Junii usque ad tertiam Septembris sunt xiiii septimanae computatis extremis. Similiter autem a tertia Septembris usque ad quartam Decembris sunt xiiii septimanae computatis extremis. Ad hoc dicimus quod hoc fit pro mysterio generationis Christi quae per tres thesserecae-decades distinguitur; legitur enim in Matthaei quod omnes generationes	Idcirco autem sic ordinata sunt quia rationabile erat ut sic respondeant proportionaliter. Nam a prima ebdomada Martii usque ad secundam Junii sunt xiiii ebdomadae et a secunda Junii usque ad tertiam septimanam Septembris sunt totidem. Sunt autem haec disposita per tesseredecades ut respondeant jejunia personis quae in genealogia Domini ponuntur in principiis tesseredecades i.e. quatuor denariorum juxta evangelium Matthaei quia sunt ab Abraham usque ad David generationes xiiii, a

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[45] Lacombe, *La vie et les oeuvres de Prévostin*, p. 79. 2. Cf. Rupert of Deutz, *De divinis officiis*, x, 26; P. L. 170, 289. ". . . a prima hebdomada Martii tres observare hebdomadarum tesserakaidekadas usque ad Natale Domini, ad similitudinem trium tessarakaidekadon quas Matthaeus in Christi generationem contexuit."

ab Abraham usque ad David generationes xiiii et a David usque ad transmigrationem Babylonis generationes xiiii et a transmigratione usque ad Christum generationes xiiii. . . .

David usque ad Jechoniam xiiii, a Jechonia usque ad Christum xiiii. . . .

From the extracts given above it will be seen that Guy d'Orchelles is no mere copyist; he adopts the ideas of his predecessor and fashions them to his own ends. The paucity of verbal coincidences in the treatises of these two men may be an indication that Guy was not using the works of Praepositinus directly; it is not impossible the relationship between the two was that of student and master.[46]

There is little evidence that Guy made use of the works of liturgical commentators prior to John Beleth. In one or two instances, one may suspect the influence of Rupert of Deutz, John of Avranches or even Amalar, and it is not improbable that he had read the works of these men. However, their contribution to his fund of knowledge is negligible compared to that of his main sources: the works of John Beleth, Peter Lombard, Peter Manducator and Praepositinus.

A much more difficult problem arises when we consider the relationship between our author's treatise and that of his contemporary, William of Auxerre (d. 1231).[47] Apparently the careers of these two men parallel each other exactly; both were students at Paris about the same time; both were masters in theology at the same period (cir. 1220–cir. 1229),[48] and both published treatises on the offices of the church. They differ widely, however, in their treatment of the matter. William of Auxerre in the opening chapter of his *Summa de officiis* lays down his plan as follows:

Primo autem de officiis ecclesiae in generali dicendum est, et postea in speciali quod in unaquaque dominica sit officium et in unaquaque solemnitate. Secundo de personis . . . tertio de loco. . . .[49]

Guy d'Orchelles on the other hand outlines the aim of his proposed work in the following words:

Quapropter de divinis officiis tractaturi theologicis rationibus ipsam divinorum officiorum naturam non per corporales imagines sed purae mentis intelligentia ad exemplum superni tabernaculi contemplemur.[50]

William of Auxerre carries out his plan in regard to the office in general, i.e., the canonical hours and the Mass, and in regard to the particulars of the office and Mass of the Sundays and chief festivals of the liturgical year. Apparently he did not finish his work, since he does not treat expressly either *de personis* or *de loco*. Guy d'Orchelles, on the other hand, neglects entirely the ordinary Sundays of the year but deals with many saint-days unnoticed by his contemporary.

Despite these divergencies in plan and general treatment of the matter, there is a striking similarity in their method of dealing with certain feasts. For example, in dealing with the feast of the Holy Innocents both propose three difficulties:

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[46] Praepositinus was chancellor at Paris and regent in theology from 1206 to 1210. (Cf. Lacombe, *op. cit.*, pp. 36–46.) Guy d'Orchelles, who was probably a Master in 1220, would probably still be a student at this period.

[47] Cf. P. Mandonnet, "Date de la mort de Guillaume d'Auxerre," *Archives d'histoire littéraire et doctrinale du moyen-âge*, VII (1932), 39–46.

[48] Father Glorieux in his table of the secular masters (*Repertoire des maîtres en théologie, post* p. 228) places Guy's period of mastership from 1218 to 1228. William's from 1218 to 1228.

[49] R. M. Martineau, "La 'Summa de officiis ecclesiasticis' de Guillaume d'Auxerre," *Etudes d'histoire*, etc., 2e série (Ottawa, 1932), p. 40. Elsewhere in this study the text is cited from Ms. Paris B. N. Lat. 14145.

[50] f. 140r.

Guy d'Orchelles, f. 145^{v}	William of Auxerre, Lat. 14145, f. 49^{v}
. . . cur istud festum ante epiphaniam celebretur.	. . . quare celebratur ante festum stella.
. . . cur in isto festo cantica laetitiae subticentur.	. . . quare cantica laetitiae subticentur.
. . . cur Innocentes martyres appellentur et cur etiam de eis celebret ecclesia.	. . . quare ecclesia solemnizat pro morte istorum puerorum.

The answers in each case are almost identical. To the first difficulty they both reply that Herod was prevented from carrying out his plan of killing the children immediately after the Magi had departed because he was summoned to Rome by Augustus Caesar to answer certain charges preferred against him by his sons, and thus the slaughter was postponed until the following year when it took place on the fourth day after the birthday of Christ. In this case they have a common source, the *Historia Scholastica* of Peter Manducator.[51] Answering the second question both deny the validity of the reason given by their predecessors,[52] namely, that the joyful canticles are suppressed because the Innocents died before the passion of Christ and descended *ad inferos;* they point out that this reason cannot be sound since the joyful canticles are sung on the feast of John the Baptist. They are again in agreement when they state that the real reason for this feature of the feast is indicated in the gospel of the day which speaks of Rachel bewailing her children; Rachel is a figure of the church who weeps for the children lost to her. Both add a second explanation as follows:

Guy d'Orchelles, f. 145^{v}	William of Auxerre, Lat. 14145, f. 49^{v}
Iterum potest reddi alia ratio; secundum legem post victoriam debebat Domino canticum decantari, quia non fecit Ezechias audivit a Domino: *Dispone domui tuae*. . . . Cum ergo pueri non pugnaverunt et sine pugna non est victoria canticum laetitiae in eorum festum cantari non debuit.	Alia ratio est quia cantica laetitiae proprie post victoriam debent cantari; unde Ezechias dictum est: *Dispone domui tuae* . . . quia post victoriam habitam non cecinit cantica laetitiae; sed Innocentes non habuerunt victoriam, non est enim victoria ubi non est pugna.

No common source has been discovered for these explanations; apparently they are peculiar to our two writers. In answering the third difficulty they proceed as follows:

Guy d'Orchelles	William of Auxerre
Si dicat aliquis quod quia pro Christo occisi sunt; exempli ratione, si modo tyrannus aliquis pueros occideret in odium nominis Christi, deberent martyres appellari; quod constat esse falsum. Unde dicendum est quod Innocentes laxato vocabulo dicti sunt martyres quadam tenui et exili significatione martyrii quia non loquendo sed moriendo confessi sunt. Dicuntur ergo martyres quia in numero illorum personaliter quaerebatur Christus.	Videtur enim quod eadem ratione quod si quis tyrannus occideret hodie tot pueros quod ecclesia deberet sollemnizare pro eis; quod falsum est. . . . Ad tertium dicimus quod festum Innocentium celebratur licet non habuerint voluntatem patiendi martyrium propter tres causas: quia in eis Christus quaerebatur et occidebatur; secunda causa est quia Christus celabatur in eis a diabolo et Herode; tertia ratio quia nuntium Domini non loquendo sed moriendo confessi sunt.

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[51] P. L. 198, 1543.

[52] Guy d'Orchelles names Beleth and Manducator; William of Auxerre writes: dicitur a magistris quod cantica, etc. (f. 49^{c}).

The hypothetical case of the *tyrannus* is not found in any other liturgical writer prior to this time. Part of Guy's answer is based on the following passage of the *Historia Scholastica* of Peter Manducator:

> Innocentes quidem martyres dicuntur laxato vocabulo non quia testes Christi sed quia pro Christo occisi sunt, quem si non loquendo moriendo tamen confessi sunt, pro quo etiam ecclesia pro eis solemnizat. . . .[53]

Apparently William of Auxerre did not use the *Historia* at this point, yet his argument is substantially the same as that of his contemporary.[54]

How are we to explain the similarity of dealing with these questions — a similarity that amounts at times to almost verbal identity? Did Guy d'Orchelles borrow from William of Auxerre or vice versa? Or, is it due merely to the fact that they are products of the same school of thought? We are content here to state the problem and to leave its solution to a later date when more data may be available.[55]

4. THE VALUE OF THE *DE OFFICIIS*

Although the liturgical scholar will find in our treatise considerable incidental information regarding the liturgy in the first quarter of the thirteenth century, he will be disappointed if he hopes to obtain from Master Guy or his contemporaries any accurate account of the origins of the various feasts. Guy's knowledge of history is sometimes a bit deficient in chronological accuracy; witness his account of the origin of the feast of the Holy Trinity:

> f. 165: . . . in the days of Pope Leo the Arian heresy flourished so greatly that in a general council there were to be found only three Catholic bishops: Hilary of Poitiers, Dionysius of Milan and Eusebius of Vercellae. Now when that perfidious doctrine had multiplied in various parts of the world, finally in his day, Alcuin the teacher of Charlemagne, fired with zeal for the destruction of that heretical wickedness and for the glory and honor of the blessed and immortal Trinity, composed a treatise on the Trinity which the blessed Gregory afterwards approved.

It is seldom, however, that Guy "descends" to history; he is more concerned with the "why" than the "when." As we have seen above, he lays down in his introductory paragraph the principle: *de divinis officiis tractaturi theologicis rationibus ipsam . . . naturam . . . contemplemur;* thus his work is a theological treatise on the offices of the church and neither a description of the liturgy nor an historical disquisition on origins.

For each feast he proposes a certain number of questions or difficulties and proceeds to answer them. His usual formula is: *Primo quaeritur cur . . . Ad quod dicimus.* His answers are based on the Scriptures or reason, only rarely on history or legend. Occasionally his applications of Sacred Scripture sound strange to modern ears, but they are quite in keeping with his day and age. His quotations from the Scriptures are more abundant than is usual in treatises of this type; his knowledge of them is, of course, exceptional as might well be expected from one who, as a Master of Theology, was chiefly occupied in commenting on the *sacra pagina.* Of the Fathers of the church he cites Origen, Chrysostom, Jerome and Augustine. He seems to have a particular predilection for Jerome; in his commentary on the feast of that saint, he says:

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[53] P. L. 198, 1544.

[54] It is to be noted that no argument can be built up on the affiliation of these three passages from their use of the phrase "non loquendo sed moriendo confessi sunt"; it is independent of all three, being found in the Collect of the Mass for the day.

[55] It is possible that some unknown or unpublished treatise on the liturgy may prove to be a common source for these two men; there is, for example, the *Manuale de officiis ecclesiasticis* of Peter of Roissy, chancellor of Chartres (cir. 1205).

f. 168v. Fuit autem tantae industriae in lege Dei quod totam ecclesiam suae sapientiae radiis illustravit. Cui autem Hieronimus non placuerit sciat se in sacris litteris minimum profecisse.

Taken as a whole, the *De officiis* of Guy d'Orchelles is of value, not only for the contribution that it makes to our knowledge of the liturgy of his day, but also as an interesting example of the comments that would be made on the church offices by a Magister of the University of Paris in the early years of the thirteenth century.

5. THE CONTENTS OF THE TREATISE

The treatise is divided into fifty-six chapters; each chapter has a title with the exception of the first which is a general introduction to the subject and a discussion on the numbers of hours in the Divine Office. The manuscript does not give a table of contents, nor does it number the chapters. For convenience' sake, we give here a list of the titles as found at the beginning of the chapters in the manuscript.

1. [Prologus: De officio divino.]
2. Quare laudetur Deus ad Primam.
3. De distinctione quatuor temporum quibus officia ecclesiae variantur.
4. Quare potius inchoat ecclesia ab uno tempore quam ab alio officium suum.
5. Quare in Adventu non fit memoria de passione et cruce.
6. Ratio officii primae dominicae Adventus.
7. De tribus versibus et uno responsorio.
8. De antiphonis desiderium antiquorum patrum exprimentibus.
9. Quare ab uno inchoatur antiphona.
10. Quare ante psalmum imperfecta post psalmum perfecta decantatur.
11. De tribus missis in Natali.
12. De festo beati Stephani.
13. De festo beati Joannis Evangelistae.
14. De festo Innocentium.
15. De festo Circumcisionis Domini.
16. De festo Epiphaniae ubi multa sunt digna memoria.
17. De festo Purificationis.
18. De tempore deviationis.
19. De Septuagesima.
20. Quod rationes jejuniorum diversae sunt.
21. De Quinquagesima.
22. De Quadragesima.
23. De Jejuniis Quatuor Temporum.
24. De distantia jejuniorum.
25. De Die Cinerum; capitulum continens materiam sermonis.
26. De media septimana Quinquagesimae.
27. De introitu passionis.
28. De diversis mysteriis in Ramis Palmarum.
29. De Coena Domini et de diversis sacramentis quae celebrantur in ecclesia illa die.
30. De vigiliis tenebrarum.
31. Quot debeant accendi candelae in tenebris.
32. De modo cantandi horas canonicas tribus diebus ante Pascha.
33. De die mortis Christi.
34. De sabbato Paschae.

35. Alia quaestio de eodem die.
36. De tempore reconciliationis.
37. De variis festis sanctorum tempore illo concurrentibus.
38. De tempore Rogationum.
39. De ratione officii in vigilia Ascensionis.
40. De tempore peregrinationis.
41. De officio Trinitatis.
42. De Nativitate beati Joannis Baptistae.
43. De festo Petri et Pauli.
44. De festo Jacobi Majoris.
45. De festo beati Petri ad Vincula.
46. De festo Inventionis beati Stephani.
47. De festo beati Sixti.
48. De festo beati Laurentii.
49. De Assumptione.
50. De morte beati Joannis Baptistae.
51. De Nativitate beatae Virginis.
52. De festo beati Michaelis.
53. De festo beati Hieronimi.
54. De festo beati Remigii.
55. De festo beati Martini.

B. The Text[1]

DE OFFICIIS ECCLESIAE

1. [PROLOGUS]

f. 140 In libro de Trinitate dicit Boethius quod in naturalibus rationabiliter, in mathematicis disciplinaliter, in divinis intellectualiter versari oportet neque duci ad imaginationes, sed potius ipsam inspicere formam.[2] Quapropter de divinis officiis tractaturi theologicis rationibus ipsam divinorum officiorum naturam, non per corporales imagines sed purae mentis intelligentiae ad exemplum superni tabernaculi contemplemur. Totum namque superne illius civitatis officium est laudare Deum, unde et filia quae adhuc in torculari premitur inter malleum et incudem matri suae libere quantum valet in hac caligine se conformat. In primis itaque quaeritur quare tempus elegit ecclesia ad laudandum Deum; nam dicit beatus Augustinus: Non debet oratio postulantis habere terminum ubi largitas donatoris non habet defectum.[3] Item dicit Augustinus super illud psalmi: *Praeveni in maturitate et clamavi* etc.[a] quod nullum tempus ad hoc est eligendum sed semper est agendum.[4] Ad quod dicimus quod revera semper orandus semper laudandus est Deus; specialiter autem certis temporibus orat eum ecclesia specialiter et laudat quibus humano genere specialia contulit beneficia. Sed in numero horarum quibus laudat eum ecclesia videtur David contrarius esse Esdrae. Dixit enim David: *Septies in die laudem dixi tibi;*[b] Esdras vero populum de Babylonica captivitate re-

[a] Ps. 118, 147.

[b] Ps. 118, 164.

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[1] The text is edited as found in the manuscript, except that the spelling has been altered to conform to modern liturgical Latin. Where the text is obviously corrupt, it has been emended; words supplied are placed between < > brackets; where one word has been substituted for another, the original is given in a note.

[2] *De Trinitate*, c. 2; P. L. 64, 1250.

[3] Locum non invenio.

[4] The quotation may be from Saint Augustine, but it is found *verbatim* without any reference to Augustine in Petri Lombardi, *Commentarium in Psalmum cxviii*, P. L. 191, 1119.

versum docuit laudare Deum quater in nocte et quater in die.[c] Ad quod dicimus quod non sunt contrarii quia matutinale officium dividitur in duas partes, una pars dicitur matutinae et media nocte debent cantari secundum quod dicit propheta: *Media nocte surgebam ad confitendum* etc.[d] altera pars dicitur laudes matutinales et debent cantari diluculo, quia tali hora surrexit Christus. Unde sunt octo horae quarum quatuor pertinent ad noctem, quatuor ad diem. Media nocte debemus laudare quia tali hora natus est salvator; dum enim *medium silentium teneret omnia et nox in suo cursu medium iter perageret, omnipotens sermo tuus Domine de regalibus sedibus ad nos venit,*[e] quando *exortum est in tenebris lumen rectis corde;*[f] et ideo institutae sunt matutinae. Laudes autem cantari debent diluculo quia tali hora Christus creditur surrexisse et Dominus in illa hora filios Israel de Egypto creditur liberasse;[5] unde in Exodo xiiii: *Jamque venerat vigilia matutina et ecce respiciens Dominus super castra Egyptiorum per columnam nubis et ignis interfecit exercitum eorum et subvertit rotas curruum ferebanturque in profundum*[g]. In hac ergo hora jubilamus pro Christi resurrectione quae causa est et figura nostrae generalis futurae.

2. QUARE LAUDETUR DEUS AD PRIMAM

Hora autem prima Deum laudamus quia tali hora angeli mulieribus
Christum nuntiaverunt surrexisse et quia a timore nocturno liberatos cum
f. 141 salute noctem fecit transire. Hora/tertia Deum laudat ecclesia quia tali
hora dedit apostolis in linguis igneis Spiritum Sanctum. Hora autem
sexta laudat ecclesia quia tunc salvator pro nostra salute suspensus est in
cruce. Hora nona quia tunc emisit spiritum et fregit infernum et liberavit
captivum, scilicet chorum prophetarum et patriarcharum et omnium
justorum qui mortui sunt ante Christi adventum. Vespertinum autem
celebratur officium quia in vespere mundi recepit Christi adventum unde
in lege sacrificium vespertinum pinguius dicebatur quam matutinum eo
quod significabat illud sacrificium quod in fine mundi est oblatum; de quo
propheta: *Elevatio manuum mearum sacrificium vespertinum.*[h] Completorium
vero duabus de causis est institutum, propter completionem figurarum
unde ait Dominus in cruce: *Consummatum est;*[i] et propter completionem
gaudiorum quae tunc erit quando erimus in consortio angelorum utroque
homine gloriosi.[6]

3. QUARE IN DIEBUS FESTIS NON FIT ORATIO IN PRIMA ET COMPLETORIO

Sed quaeritur quare in prima et completorio in diebus festivis de sanctis non fit oratio sicut in aliis horis; ad quod dicimus quod ei qui est alpha et omega i.e. principium et finis, reddendae sunt istae horae, scilicet prima et completorium, quia in lege erat praeceptum quod caput et cauda offerretur Domino; hoc est quod principium et consummatio totius boni tantum Deo debent attribui. Haec sunt primitiae et decimae.

[c] Cf. 2 Esd. 9, 3.
[d] Ps. 118, 62.
[e] Sap. 18, 14. Introitus Missae Dominicae in Oct. Nativitatis.
[f] Ps. 111, 4.
[g] Exod. 14, 24–25.
[h] Ps. 140, 2.
[i] Joan, 19, 30.

[5] Cf. Joannis Beleth, *Rationale divinorum officiorum*, c. 28; P. L. 202, 40.

[6] Cf. Beleth, c. 29; Joannis Abrincensis, *Liber de officiis ecclesiasticis*, c. 12; P. L. 147, 29. Guillielmi Autissiodorensis, *Summa de officiis ecclesiasticis* (Ms. B. N. Lat. 14145), f. 42c, 42d, 43a.

4. DE DISTINCTIONE QUATUOR TEMPORUM QUIBUS OFFICIA ECCLESIAE VARIANTUR

Consequenter de temporibus quibus variatur officium ecclesiae videamus. Sunt autem quatuor tempora, scilicet tempus deviationis, tempus reconciliationis, tempus peregrinationis, tempus revocationis. Tempus deviationis repraesentat ecclesia a Septuagesima usque ad Pascha et tunc legitur in ecclesia liber Genesis ubi agitur de peccato et exilio et miseria primi hominis. Tempus autem reconciliationis repraesentat ecclesia a Pascha usque ad octavas Pentecostes et tunc agit ecclesia de resurrectione, ascensione, Spiritus Sancti missione, per quae reconciliati sumus. Tempus autem peregrinationis repraesentat ecclesia ab octavis Pentecostes usque <ad> Adventum Domini et tunc legitur in ecclesia liber Regum, libri Macchabaeorum in quibus agitur de bellis et liber Job in quo agitur de temptationibus et de militia christiana. Tempus autem revocationis repraesentat ecclesia ab Adventu usque ad Natale Domini et tunc agitur de utroque Christi adventu, scilicet de adventu in carne et de adventu ad judicium.[7]

5. QUARE POTIUS INCHOAT ECCLESIA AB UNO TEMPORE QUAM AB ALIO OFFICIUM SUUM

Quaeritur ergo quare potius inchoat ecclesia officium suum a tempore revocationis quam a tempore deviationis cum tempus deviationis sit prius. Prior enim fuit deviatio quam revocatio. Ad quod dicimus quod ideo ab Adventu inchoat officium ecclesia quia per adventum Christi omnia sunt innovata, unde propheta: Ecce veniet propheta magnus et ipse renovabit f. 142 Jerusalem.[8] Quatuor enim modis innovavit Jerusalem; innovavit Jerusalem sacramentis, moribus, miraculis et mandatis, unde in Apoc. xx: *Et dixit qui sedebat in throno: Ecce nova facio omnia.*[j]

Prima itaque de officio ecclesiae in Adventu Domini disseramus. Quaeritur ergo quare in Adventu quaedam cantica laetitiae[9] non recitentur sicut *Gloria in excelsis Deo*, *Te Deum laudamus*, *Ite missa est*, et quaedam decantentur sicut *Alleluia* quod tam expressius exprimit gaudium quam aliud canticum. Ad quod dicimus quod in Adventu repraesentamus statum antiquorum patrum qui magno desiderio exspectaverunt Christi adventum, ut autem dicit Salomon: *Exspectatio justiorum laetitia*[k] exspectantium, inquam, *beatam spem et adventum gloriae magni Dei;*[l] et ad istam laetitiam exprimendum decantatur *Alleluia*. Quia vero ut dicit Sapiens: *Spes quae differtur affligit animam*,[m] simul cum gaudio erant cum maerore, et ideo [non] recitetur *Gloria in excelsis Deo* quod est canticum pacis quia nondum erat adhuc natus Christus qui *est pax nostra qui fecit utraque unum*, sicut dicit Apostolus ad Ephesios.[n] Ejus enim nativitas fecit pacem inter Deum et hominem, inter angelum et hominem, inter hominem et hominem. Dicit enim Micheas: *Pax erit in terra nostra dum venerit Assyrius.*[o] In nativitate enim Christi templum Pacis Romae corruit quia natus erat ille in terris *qui posuit fines suos pacem.*[p]

[j] Apoc. 5, 21.
[k] Prov. 10, 28.
[l] Tit. 2, 13.
[m] Prov. 13, 12.
[n] Eph. 2, 14.
[o] Mich. 5, 5.
[p] Ps. 147, 3.

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[7] Cf. Beleth, c. 65; Guill. Autiss., f. 46c.

[8] Antiphona quinta ad Vesperas Dominicae primae Adventus.

[9] Guill. Autiss., f. 47b.

6. QUARE IN ADVENTU NON FIT MEMORIA DE PASSIONE ET CRUCE

Item quaeritur quare per totum Adventum subticetur memoria passionis et crucis. Ad hoc dicimus quod tempore illo erat Christus ad huc in utero matris. Lex autem dicit: *Non coques haedum in lacte matris* [q] i.e. non interficies Christum tempore suae conceptionis; ne ergo videatur Christus ante occidi quam nasci, non recolitur tempore Adventus memoria passionis et crucis.

7. RATIO OFFICII PRIMAE DOMINICAE ADVENTUS

Sed quaeritur quare prima dominica Adventus legitur illud evangelium quod ad passionem pertinere videtur, scilicet: *Cum appropinquasset Jesus Jerosolymis et venisset Bethphage* etc.[r] Ad quod dicimus quod illud evangelium narrat illam processionem quae facta est Domino venienti Jerusalem. Illa autem processio figura est illius processionis quae fiet in die judicii quando occurrent omnes electi Domino venienti ad judicium. Dicit enim Apostolus ad Thess. prima: *Quod nos qui vivimus qui residui sumus rapiemur* cum omnibus sanctis *in nubibus obviam Christo in aera.*[s] Quia vero de utroque adventu sollemnizat ecclesia ideo tali die legitur illud evangelium. Item in illo evangelio legitur quomodo Christus ascendit in montem Oliveti; per montem Oliveti intelligitur celsitudo divinae misericordiae. In illo namque tempore stillaverunt montes dulcedinem et colles fluxerunt lac et mel quando rorantibus caelis desuper nubibus quia pluentibus justum aperta
f. 143 est terra nostra laeta/germinans salvatorem quia domino dante benignitatem et terra nostra reddente fructum suum,[t] *misericordia et veritas obviaverunt sibi, justitia et pax osculatae sunt.*[u]

8. DE TRIBUS VERSIBUS ET UNO RESPONSORIO

Item quaeritur quare prima dominica Adventus post primum responsum tres versus decantentur. Quaeritur et quare triplex fiat repetitio responsorii, prima a remotiori, secunda a minus remoto, tertia a propinquiori.[10] Quaeritur et quare illis tribus versibus redditur unum *Gloria*. Ad quod dicimus quod ideo tres versus cantantur quia trium temporum[11] homines per Christi incarnationem salvantur; fuerunt enim homines ante legem, sub lege, et in tempore gratiae. Quia quicumque ex his ad salutem venerunt, per fidem mediatoris salvati sunt, unde et *qui praeibant et qui sequebantur clamabant dicentes: Hosanna filio David.*[v] Prima repetitio responsorii quae fit a remotiori significat illos qui fuerunt ante legem qui a remotis viderunt veritatem, in cuius rei figura cantat ecclesia: *Aspiciens a longe* etc.[12] Secunda repetitio quae fit a minus remoto significat illos qui erant sub lege qui a propinquiori viderunt veritatem. Tertia vero repetitio figurat illos qui sunt in tempore gratiae qui aliis propinquiores sunt illi veritati *quae de terra orta est,*[w] i.e. de Virgine Maria. Praedictis autem versibus unum redditur *Gloria* quia unus honor, una reverentia, una gloria debetur totae Trinitati quae operata est incarnationem Filii et per quam salvantur tria genera hominum praedictorum.

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[q] Exod. 23, 19.
[r] Matt. 21, 1.
[s] Thess. 4, 14–16.
[t] Cf. Joel 3, 18; Is. 45, 8; Ps. 84, 13.
[u] Ps. 84, 11.
[v] Matt. 21, 9.
[w] Ps. 84, 12.

[10] Cf. Beleth, c. 63; Guill. Autiss., f. 47c.

[11] Ms. tempora.

[12] Responsorium primae lectionis Dominicae primae Adventus.

9. DE ANTIPHONIS DESIDERIUM ANTIQUORUM PATRUM EXPRIMENTIBUS

Item quaeritur de illis antiphonis: *O Sapientia*, *O radix Jesse*, etc. cur secundum usum quarundam ecclesiarum sunt septem et secundum usum aliarum sunt novem.[13] Ad quod dicendum quod omnes illae antiphonae exprimunt desiderium antiquorum patrum[14] et secundum usum quarundam ecclesiarum sunt septem quia illis petititur Christus et optatur septiformis gratia Spiritus Sancti plenum;[15] sunt autem novem secundum usum aliarum ecclesiarum quia per Christi adventum reparabitur ruina angelorum. Omnes autem sunt secundi toni, quia per illas optatus ille qui est gigas geminae substantiae.[16] Sed quare bibunt clerici in quibusdam ecclesiis post cantum antiphonarum?[17] Quia post desiderium sequitur refectio et satietas aeternae beatitudinis de quo dicitur in psalmo: *Satiabor cum apparuerit gloria tua.*[x]

10. QUARE AB UNO INCHOATUR ANTIPHONA

Item quaeritur quare tantum ab uno inchoetur antiphona et a toto choro decantetur. Ad quod dicimus quod antiphona caritatem significat; ab uno autem inchoatur in figura Christi quia *ipse prior dilexit nos.*[y] Chorus autem totus respondet quia caritati Christi singuli debent respondere. Terminatur autem antiphona in pneumate sive in jubilo quia quanta sit laetitia in futuro non possumus hic explicare, de quo Isaias: *Gaudium et laetitia invenietur in ea, gratiarum actio et vox laudis.*[z]

11. QUARE ANTE PSALMUM IMPERFECTA, POST PSALMUM PERFECTA DECANTATUR

Item quaeritur quare antiphona ante psalmum imperfecta, post psalmum vero perfecta decantetur. Ad quod dicimus quod antiphona/caritatem significat quae hic est imperfecta; post psalmum autem quae operationem bonam designat perfecte cantatur, quia caritas completo labore in patria consummabitur, ut quae est igniculus in Sion, fiat caminus in Jerusalem.[18] f. 144

12. DE TRIBUS MISSIS IN NATALI

Consequenter de tribus missis in Natali dicendum est. Quaeritur ergo quare tres missae in Natali celebrantur;[19] quaeritur etiam cur prima celebratur de nocte, secunda diluculo, tertia plena luce. Ad quod dicendum quod media nox significat tempus ante legem, diluculum vero tempus legis et prophetiae, plena vero dies tempus gratiae. Tres ergo missae tribus praedictis temporibus celebrantur quia homines trium temporum per Christi nativitatem salvantur. Officium autem primae est de aeterna Christi generatione quae nobis penitus est occulta; unde Isaias: *Generationem ejus quis enarrabit.*[a] In eadem autem missa legitur evangelium de temporali Christi nativitate et hoc contra Nestorium hereticum ut ostendatur idem Christus aeternaliter de Patre genitus et temporaliter natus de matre. Fit autem de converso in tertia missa in qua notatur officium de temporali Christi nativitate, scilicet: *Puer natus est nobis*,[b] et legitur evangelium de aeterna in quo dicitur: *In principium erat Verbum* etc.,[c] et hoc fit contra hereticos qui dixerunt Christum ex Maria habuisse initium. Et inde post officium de temporali generatione legitur de aeterna quasi dicat ecclesia: Etsi puer natus est de Maria, fuit tamen ille ante saecula omnia. Unde in libro Sapientiae legitur: *Primogenita ante omnem creaturam;* [d] et alibi dicit Sapientia: *Ante montes et colles ego parturiebar;* [e] et in Joannis dicit Christus: *Antequam Abraham fieret ego sum.*[f] Secunda autem missa tota est de temporali Christi nativitate et per hoc designatur tempus quo hereses conquieverunt.

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[x] Ps. 16, 15. [y] 1 Joan. 4, 10. [z] Is. 51, 3. [a] Is. 53, 8.

[13] Antiphonae majores ad Magnificat, 17–23 Dec.

[14] Cf. Praepositini, *Tractatus de officiis* (Ms. Salz. vi–32), f. 3b.

[15] Beleth, c. 63.

[16] S. Augustini, *Contra Sermonem Arrian.*, c. 8; P. L. 42, 689.

[17] Cf. Guill. Autiss., f. 48c. On this practice see: E. Martène, *Tractatus de antiqua ecclesiae disciplina* (Lugduni, 1706), p. 77.

[18] Cf. Praepositinus, f. 41b.

[19] *Ibid.*, f. 4b; Guill. Autiss., f. 49a.

13. DE FESTO BEATI STEPHANI

Consequenter de natali beati Stephani dicendum est. Quaeritur ergo, cum passio beati Stephani facta fuerit in Kalendis Augusti videlicet die quo celebratur ejus inventio et inventio corporum Gamaliel et Abibon, <quae> fuit in crastino Nativitatis dominicae,[20] cur officia eorundem ita permutavit ecclesia. Ad quod dicimus quod festum de morte Stephani dignius est quam festum de inventione et ideo in digniori loco ponitur juxta Christi Nativitatem.[21] Iterum alia causa: Stephanus post mortem Christi primus sutinuit martyrium; mortem enim qua salvator dignatus est pro omnibus pati, hanc ille primus reddidit salvatori.[22] Obitus autem martyrum natale dicitur sive natalitium, cum enim moriuntur mundo, tunc oriuntur Christo. Unde quia primus secutus est Christum, natale Stephani conjungitur natali Christi; unde in ejus legenda legitur; Heri natus est Christus in terris ut hodie nasceretur Stephanus in caelis.[23] Tertia vero ratio quare permutavit ecclesia: Quia sunt tria genera martyrii;[24] primum est voluntate et opere et hoc dignius; secundum est voluntate et
f. 145 non opere et hoc dignum minus;/tertium est opere et non voluntate et hoc infimum.[25] Permutavit ergo ecclesia ut haec tria martyria ex ordine sequerentur. Primum est Stephani quod est dignius et ideo Christi Nativitati propinquius; secundum est Joannis qui non defuit martyrio sed martyrium defuit ei, et est minus dignum et ideo Nativitati Christi minus propinquum; tertium est Innocentium qui fuerunt opere martyres non voluntate et est minus dignum et ideo a Nativitate magis remotum.

14. DE FESTO BEATI JOANNIS EVANGELISTAE

Consequenter quaeritur quare festum beati Joannis Evangelistae mutetur, cum juxta historiam obitus ejus fuit in nativitate Joannis Baptistae.[26] Ad quod dicendum quod illi cedere debuit de quo legitur: *Inter natos mulierum* etc.[g] Hac etiam de causa potest dici factum ut tria genera martyrii juxta se invicem ex ordine ponerentur. Item quaeritur de usu quarundam ecclesiarum utrum sit reprobandus in quibus, scilicet soli diaconi officium celebrant in festo beati Stephani, in festo beati Joannis soli sacerdotes, in festo vero Innocentium pueri. Ad quod dicimus quod in quolibet istorum festorum a sacerdotibus debent dici orationes et benedictiones. Si autem a diaconibus vel pueris usurpetur quod sacerdotum est, talis usus est proculdubio reprobandus; multa enim sustinentur in ecclesia pro vitando scandalo quorundam qui sunt emulatores antiquarum consuetudinum.[27]

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[b] Is. 9, 6. Introitus tertiae missae.
[c] Joan. 1, 1.
[d] Eccl. 24, 5.
[e] Prov. 8, 25.
[f] Joan. 8, 58.
[g] Matt. 11, 11.

[20] Beleth, c. 70; Praepos., f. 6a; Guill. Autiss., f. 49b.
[21] Beleth, c. 70; Guill. Autiss., f. 49b.
[22] Guill. Autiss., f. 49c.
[23] Beleth, c. 70; Guill. Autiss., f. 49c.
[24] Ms. matirium.
[25] Praeposit., f. 7a; Guill. Autiss., f. 49c.
[26] Beleth, c. 70; Praepos, f. 6a.

15. DE FESTO INNOCENTIUM

Consequenter de festo Innocentium dicendum est. Et primo quaeritur cur istud festum ante Epiphaniam celebretur, cum juxta historiam fuit prius apparitio stellae quam occisio Innocentium. Ad quod dicendum quod cum Herodes de nece puerorum disponeret, per epistolam citatus est a Caesare Augusto ut iret Romam accusationi filiorum suorum responsurus [28] Eundo ergo et redeundo fere totus annus elapsus est, unde in reditu suo anno revoluto ab ortu Christi quarto die a nativitate pueros occidit et ideo istud festum Epiphaniae praecedit. Quaeritur autem cur in isto festo cantica laetitiae subticentur, scilicet *Te Deum laudamus*, *Gloria in excelsis Deo*, *Alleluia*. Manducator in Historiis [29] dicit quod ideo quia ipsi primum ad inferos descenderunt, sed haec causa nulla esse probatur quia eadem ratione in festo Joannis Baptistae subticerentur quia de eo certum est quod ad inferos descendit. Ad quod dicimus quod tam Manducator quam Joannes Beleth [30] qui de officiis ecclesiae tractavit, in assignatione causae defecerunt. Dicimus itaque quod in evangelio quod in illa die legitur, causa huius suppressionis insinuatur. Legitur enim in evangelio illo quod *Rachel plorans filios suos non consolabitur quia non sunt.*[h] Juxta historiam enim Rachel plorare inducitur Benjamitas qui pro uxore levitae omnes deleti sunt ab aliis tribubus praeter sescentos qui animas suas in monte salvaverunt,[i] minatur ergo Jeremias[j] tantam imminere duabus tribubus ruinam
f. 146 quanta facta fuerat/in filiis Rachel.[31] Fuit ergo comminatio quantum ad duas tribus, prophetia fuit de morte Innocentium. Per Rachel intelligitur ecclesia quae tria genera filiorum deplorat.[32] Deplorat enim martyres miserabiliter passos quos adhuc saluti fratrum suorum vidit esse necessarios, sed non vult consolari hic sed totam consolationem suam transfert ad futurum. Deplorat iterum filios in martyrio lapsos de quibus inconsolabiliter dolet. Dolet iterum morte preventos qui spe sola erant filii quia ad susceptionem fidei erant praeparati, pro quibus iterum ecclesia inconsolabiliter dolet. Unde ad expressionem huius doloris quam habet ecclesia de tribus generibus filiorum, ut dictum est, cantica laetitiae subticet ac si ipso facto diceret: *Renuit consolari anima mea* [k] quia quos sperabam filios tamquam in lucem genitos abortivos amisi.

Iterum potest reddi alia ratio. Secundum legem post victoriam debebat Domino canticum decantari quod quia non fecit Ezechias audivit a Domino: *Dispone domui tuae quia cras morieris et non vives.*[l] Cum ergo pueri non pugnaverint et sine pugna non est victoria, canticum laetitiae in eorum festo cantari non debuit.[33] Sed quaeritur cur Innocentes martyres appellentur, cur etiam de eis celebret ecclesia; si dicat aliquia quod quia pro Christo occisi sunt, exempli ratione, si modo tyrannus aliquis pueros occideret in odium nominis Christi, deberent martyres appellari, quod constat esse falsum.[34] Unde dicendum est quod Innocentes laxato vocabulo dicti sunt martyres quadam tenui et exili significatione martyrii, quia non loquendo sed moriendo confessi sunt.[35] Dicuntur ergo martyres quia in numero illorum personaliter quaerebatur Christus,[36] unde patet quod si modo in odium [37] Christi occiderentur, non debent martyres appellari.

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[h] Matt. 2, 18.
[i] Jud. 20.
[j] Jer. 31, 15.
[k] Ps. 76, 3.
[l] Is. 38, 1.

[27] Beleth, c. 72; cf. Guill. Autiss., f. 50b.

[28] Petri Manducatoris, *Historia Scholastica in Evangelia*, c. 11; P. L. 198, 1543. Guill. Autiss., f. 49c.

[29] *Hist. Schol. in Evang.*, c. 12; P. L. 198, 1543.

[30] *Rationale*, c. 70.

[31] Manducator, c. 12; P. L. 198, 1544.

[32] Cf. Guill. Autiss., f. 49d.

[33] *Ibid.*

16. DE FESTO CIRCUMCISIONIS DOMINI

Consequenter de festo Circumcisionis videamus. Quaeritur ergo cur de circumcisione fit festum in novo testamento cum dicat Apostolus: *Si circumcidamini, Christus nihil vobis proderit.*[m] Ad quod dicimus quod ideo de circumcisione Christi celebratur ut quod [38] Christus non venit legem solvere sed adimplere monstretur. Et hac etiam de causa ideo octava die a Nativitate Christi de circumcisione celebratur, quia in octava Resurrectionis quando *corruptibile induet incorruptionem et mortale immortalitatem* [n] vera circumcisione in corpore et in anima decorabimur. Debent autem die circumcisionis duae missae celebrari, una de pariente alia de partu; officium de pariente est: *Vultum tuum Domine*, officum de partu est: *Puer natus est nobis.*[39]

17. DE FESTO EPIPHANIAE UBI MULTA SUNT DIGNA MEMORIA

Consequenter de festo Epiphaniae disseramus. Circa hoc festum videntur multae proponi quaestiones. Quaeritur quot festa concurrunt illa die; ad quod dicimus quod tria. Est enim primum de apparitione stellae quod proprie epiphania nuncupatur ab epi quod est super et phanos quod est f. 147 apparitio, quia stella antecedebat magos quousque staret supra/ubi erat puer [40] et haec apparitio facta est tertia decima die a nativitate Christi quae incepit apparere eis ab ipso die nativitatis. Si autem quaeritur quomodo in tanto temporis spatio, scilicet tredecim diebus, de tam remotis partibus venire potuerunt ad locum ubi erat puer, dicimus quod secundum Joannem Chrysostomum [41] stella apparuit eis ante ortum salvatoris et ita ante nativitatem iter veniendi arripuerunt. Alii vero dicunt quod illud miraculose factum est. Nos autem dicimus quod magi in dromedariis venerunt secundum vaticinium Isaiae: *Inundatio camelorum operiet te, dromedarii Madian et Epha.*[o] Dromedarius autem est animal velocissimum in cursu unde tantum potest currere una die quantum potest currere equus velocissimus tribus diebus; [42] unde dicitur dromedarius a dromos quod est cursus et ares quod est virtus, quasi animal virtuosum in cursu.[43] Primum ergo festum est de apparitione stellae quae tertia decima die a nativitate Domini tres reges scilicet magos a magnitudine sapientiae sic dictos,[44] ad locum ubi erat Christus perduxit. In quo ducatu, Isaiae prophetia impleta est: *Et ambulabunt*, inquit, *gentes in lumine tuo et reges in splendore ortus tui.*[p] Unde legitur [in] evangelio Matthaei cap. ii: *Cum natus esset Jesus in Bethlehem Juda in diebus Herodis regis, ecce magi ab Oriente venerunt Jerosolymam dicentes: Ubi est qui natus est rex Judaeorum? Vidimus enim stellam in Oriente et venimus adorare eum.*[q]

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[m] Gal. 5, 2.

[n] 1 Cor. 15, 53.

[o] Is. 60, 6.

[34] Cf. Guill. Autiss., f. 49c.

[35] Manducator, *Hist. Schol. in Evang.*, c. 13; P. L. 198, 1544.

[36] Guill. Autiss., f. 49d.

[37] Ms. modum.

[38] Ms. in quo.

[39] Beleth, c. 71; Praepos., f. 7a.

[40] Praepos., f. 7b; Guill. Autiss., f. 50a.

[41] *In Matt. Homilia*, VI; P. G. 57, 63. Cf. Guill. Autiss., f. 50a, qui hoc dictum Isidoro attribuit.

[42] Beleth, c. 73.

[43] Guill. Autiss., f. 50a.

[44] *Ibid.*

Eadem autem die concurrit festum baptismi salvatoris; trigesimo enim anno a nativitate sua decima tertia die a nativitate baptizatus est Christus a Joanne ut tactu suae mundissimae carnis vim regenerativam conferret aquis.[45] Unde legitur evangelium Lucae cap. iii: *Factum est autem cum baptizaretur omnis populus* etc.[r] Anno autem secundo a baptismo eodem die convertit Dominus aquam in vinum, sicut habetur in Joannis cap. ii: *Factae sunt nuptiae in Cana Galilaeae et erat mater Jesu ibi;*[s] sed propter magnitudinem servitii hoc evangelium differtur usque ad sequentem dominicam. Ex praedictis quoque constat quod praedicta sollemnitas est una de praecipuis sollemnitatibus anni propter tria festa quae concurrunt, unde in antiquis codicibus invenitur festum Epiphaniarum. Prima enim ut diximus apparitio dicitur epiphania; secunda scilicet quae facta est in baptismo quando audita est vox patris: *Hic est filius meus dilectus in quo mihi bene complacui* etc.,[t] quando descendit Spiritus Sanctus corporali specie sicut columba in ipsum; unde merito dicitur ista apparitio theophania quia tota Trinitas ibi manifesta est, Pater in voce, Filius in carne, Spiritus Sanctus in columbae specie.[46] Tertia dicitur bethania, a beth quod est domus et phanos, apparitio, quia in domo sedens convertit aquam in vinum in quo evidenter apparuit divinitatis potentia.[47] Unde Joannes dicit: *Hoc fecit initium signorum Jesus in Cana Galilaeae et manifestavit gloriam suam.*[u]

Sed emergit hic quaestio non modica: Cur de baptismo legitur evangelium de nocte? f. 148 Ad quod dicimus quod duo evangelia/tantum de nocte leguntur in ecclesia, quorum utrumque est de Christi generatione secundum carnem;[48] primus est Matthaei quod legitur in Nativitate Christi: *Liber generationis* etc.,[v] secundum est Lucae quod legitur in nocte Epiphaniae: *Factum est* etc.[w] Generatio Christi a nobis explicari non potest; unde dicit Joannes: *Non sum dignus solvere corrigiam calceamenti ejus*,[x] i.e. mysterium incarnationis sufficienter explicare. Unde etiam Joannes Evangelista in Apocalypsi flebat quia non est inventus in caelo nec in terra homo qui possit aperire librum et solvere signaculum ejus.[y] Isaias quoque dicebat: *Generationem ejus quis enarrabit?*[z] quasi nullus; quod non tantum de aeterna Christi generatione sed etiam de temporali potest accipi. De nocte ergo utrumque evangelium legitur ad ostendendum ignorantiam et impotentiam fragilitatis humanae.

Sed iterum oritur profunda quaestio: Cur Matthaeus generationem Christi describens procedit descendendo, Lucas autem ascendendo?[49] Incipit enim sic: *Factum est autem cum baptizaretur omnis populus* etc. *et ipse Jesus erat incipiens quasi annorum triginta ut putabatur filius Joseph qui fuit Heli* etc.,[a] et procedit ascendendo usque ad Adam et post usque ad Deum. Ad hoc dicimus quod huius quaestionis eadem est solutio quae est istius quaestionis quam proponit Augustinus: [50] Isaias enumerans dona Spiritus Sancti incipit a spiritu sapientiae et descendit ad spiritum timoris; [b] David autem in illo psalmo *Afferte Domino filii Dei* etc., in illo versu, scilicet: *Vox Domini super aquas,*[c] incipit a spiritu timoris et ascendendo procedit usque ad spiritum sapientiae. Cuius solutionem quaestionis ponit beatus Augustinus dicens quod Isaias illius incarnationem describens qui *caelos inclinavit et descendit,*[d] *qui seipsum exinanivit formam servi accipiens,*[e] ab alto incipit, scilicet a dono sapientiae quod est excellentissimum inter dona et descendit ad spiritum timoris quod est infimum. David autem nos docet ascendere per viam humilitatis per quam descendit Christus; incipit a spiritu timoris et ascendit usque ad donum sapientiae. Sic et Matthaeus describens Christi generationem, ostendit qualiter Christus descendit in uterum matris de sinu Patris; Lucas autem eandem viam nos docens ascendere ad Deum, incipit a baptismo qui est primus gradus ascendentium in scala veri Jacob et procedit usque ad Deum.[51] Per illa nomina generationis quae ponit, intelliguntur diversa genera donorum, varii animi profectus, quibus ascenditur ad Deum.

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[p] Is. 60, 3.
[q] Matt. 2, 1.
[r] Luc. 3, 21.
[s] Joan. 2, 1.
[t] Matt. 3, 17.
[u] Joan. 2, 11.
[v] Matt. 1, 1.
[w] Luc. 3, 21.
[x] Joan. 1, 27.
[y] Apoc. 5, 2–4.
[z] Is. 53, 8.
[a] Luc. 3, 21–23.

[45] Petri Lombardi, *Sententiarum*, iv. d. 3, c. 6. Manducator, *Hist. Schol. in Evang.*, c. 33.

[46] Praepositinus, f. 7b; Guill. Autiss., f. 50a.

[47] *Ibid.*

[48] Beleth, c. 73.

[49] Cf. Beleth, c. 74; Praepos., f. 8a; Guill. Autiss., f. 50d.

Item quaeri potest quare in Epiphania non decantatur invitatorium. Ad quod dicimus quod psalmus ille est invitatorius ad fidem; per illos autem magos significantur gentiles qui non invitati veniunt ad fidem et ideo illud festum invitatorium non habet.[52] Decantatur tamen sexto loco in secundo nocturno quia sexta aetate gentiles ad fidem venerunt vocati per apostolos [53] ut exemplo eorum qui non invitati venerunt duce stella, i.e. gloriosa virgine Maria, ad Christum veniamus. Item notandum quod in quibusdam ecclesiis pueri non intrant chorum antequam finitum sit invitatorium, quia Judaei tardi/ad credendum qui per pueros significantur f. 149 exspectant adhuc cum asino quos sensus tarditas praegravat asinina. Cum autem plenitudo gentium intraverit, sicut legitur ad Romanos,[f] tunc et ipsi intrabunt, quia si fuerit numerus filiorum Israel sicut arena maris, reliquiae salvae fient. Iterum quaeri potest cur in exequiis mortuorum non decantatur invitatorium. Ad quod dicimus quod invitatorium invitat ad fidem, unde cum post mortem evacuetur fides, pro defunctis non cantatur; ubi tamen pro loci consuetudine decantatur, sicut in Morinum ecclesia,[54] vivorum consolatio est.

18. DE FESTO PURIFICATIONIS

Consequenter de festo Purificationis dicendum est, ubi primo oritur quaestio: Cur beata virgo purificari voluit cum secundum legem purificari non indiguit? Lex enim dicit: *Mulier quae suscepto semine peperit masculum immunda erit septem diebus;*[g] sed hoc beatae virgini minime convenit quia non ex virili semine sed mystico spiramine concepit. Ut enim beata virgo ostenderet se matrem illius qui non venit legem solvere sed adimplere se cum filio suo templo representavit.[55] Sed quaeritur cur dicat Isaias: *Oblatus*

[b] Is. 11, 2.
[c] Ps. 28, 5.
[d] Ps. 17, 10.
[e] Phil. 2, 7.
[f] Rom. 11, 25.
[g] Lev. 12, 2.

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[50] St. Augustine comments on the order of the gifts in Isaias in several places, e. g. *Sermo* 250; P. L. 38, 1166; *Sermo* 270; *ibid.* 1242, but Guy's source here is probably Peter Lombard, *Commentarium in Psalmos*, Ps. xxviii; P. L. 191, 285.

[51] Cf. Guill. Autiss., f. 50d.

[52] Beleth, c. 73; Praepos., f. 7b; Guill. Autiss., f. 50d.

[53] Beleth, c. 73.

[54] Therouane, dept. Pas de Calais.

[55] Beleth, c. 81; Guill. Autiss., f. 51b.

est quia ipse voluit.[h] Ad quod dicimus quod circumcisus est quia debuit, baptizatus quia profuit, passus quia oportuit.[56] Lex enim dicit: *Omnis anima cuius praeputii caro circumcisa non fuerit peribit de populo suo*,[i] et ita secundum legem circumcidi debuit. Baptizatus est quia profuit, nam tactu suae mundissimae carnis vim regenerativam contulit aquis.[57] Passus autem est quia oportuit, quia *Christum oportuit pati et sic intrare in gloriam suam.*[j] Oblatus est quia ipse voluit, quia secundum legem offerri debuit, quia dicit: *Mulier quae suscepto semine* etc. Notandum autem quod triplex est oblatio; prima est mysticae significationis, secunda purificationis, tertia redemptionis. De prima dicit Matthaeus: *Apertis thesauris suis obtulerunt ei munera, aurum thus et murrham.*[k] Per aurum intellige sapientiam, per thus quod est boni odoris intellige bonam famam, per myrrham quae est amarissima intellige bonam vitam. Vere enim reges qui se et alios regunt in virtutibus hanc oblationem Deo faciunt. Vel aliter per aurum intellige vim rationabilem, per thus vim concupiscibilem quae debet appetere virtutum odorem, per myrrham intellige vim irascibilem quae armatur et armaricatur in detestationem vitiorum. Haec tria Domino offerre nihil aliud est quam Deum ex tota vi rationabili, ex tota concupiscibili, ex tota irascibili diligere, hoc est ex tota mente, ex tota corde, ex tota anima Deum diligere sicut habetur in lege; hoc est sapienter, dulciter, fortiter. His enim tribus modis diligendus est Dominus; his modis diligebat eum Magdalena quia *sedens secus pedes Domini audiebat verbum ipsius*,[l] ecce sapienter; osculabat pedes Jesu et lacrimis rigabat et capillis tergebat,[m] ecce dulciter; *Maria optimam partem elegit quae non auferetur ab ea*[n] in aeternum, ecce fortiter. Hos autem modos diligendi separatos invenimus in Petro; dulciter dilexit
f. 150 quando dixit: *Absit/hoc a te Domine, non morieris*,[o] sed neque sapienter unde audivit a Domino: *Vade retro Satana, non enim sapis ea quae Dei sunt*,[p] sapienter dilexit sed non fortiter quando dixit: *Etsi oportuerit me mori tecum non te negabo*,[q] sed quia nondum fortiter diligebat cecidit et negavit. Hos autem tres modos insimul habuit quando constanter coram Nerone respondit: *Magis oportet Deo quam hominibus obedire.*[r]

Secunda oblatio est purificationis; non quia Christus qui abstulit peccata mundi vel mater ejus <quae> semper intacta, semper immaculata, semper munda permansit, purificatione indiguerit, sed nos tali oblatione purificandos monstravit. De hac oblatione legitur: Obtulerunt pro eo Domino *par turturum aut duos pullos columbarum:*[s] in turture castitas, in columba vero simplicitas designatur. Par autem turturum debemus offerre propter duplicem munditiam mentis scilicet et carnis; unde dicit Isaias: *Mundamini, mundamini qui fertis vasa Domini*,[t] quia fideles esse debent vasa Spiritus Sancti; unde Apostolus ad Cor. ii: *Quia habemus thesaurum Dei in vasis fictilibus.*[u] Duas vero columbas debemus offerre propter duplicem simplicitatem quam debemus habere; impudicus oculus impudici cordis est nuntius.

Tertia oblatio est redemptionis quam oblatus est in cruce pro nobis de qua oblatione in psalmo legitur: *Elevatio manuum mearum sacrificium vespertinum.*[v] Sed quaeri potest cur festum purificationis appelletur Ypapanti

[h] Is. 53, 7. [i] Gen. 17, 14. [j] Luc. 24, 26. [k] Matt. 2, 11.
[l] Luc. 10, 39. [m] Joan. 12, 3. [n] Luc. 10, 42. [o] Matt. 16, 22.
[p] Matt. 16, 23. [q] Matt. 26, 35. [r] Act. 5, 29; responsum Petri principi sacerdotum.
[s] Luc. 2, 24. [t] Is. 52, 11. [u] 2 Cor. 4, 7. [v] Ps. 140, 2.

[56] Manducator, *Sermo* ix; P. L. 198, 1745. [57] Petri Lombardi, *Sententiarum*, IV, d. 3, c. 5.

Domini. Ad quod dicimus quod ypapanti interpretatur obviatio quia illa die Symeon et Anna veritati quam diu exspectaverunt obviarunt.[58] Et quia in cantu Symeonis dicitur: *Lumen ad revelationem et gloriam plebis Israel*,[w] ideo luminaria in ecclesia deportantur,[59] ac si ipso facto ecclesiae dicatur: *Surge illuminare Jerusalem quia venit lumen tuum et gloria Domini super te orta est.*[x]

19. DE TEMPORE DEVIATIONIS

Consequenter de tempore deviationis dicendum. Fuit autem tempus deviationis ab Adam usque ad Moysem per quem Deus *testimonium suscitavit in Jacob et legem posuit in Israel.*[y] Fuit autem tempus revocationis a Moyse usque ad Christum per quem *gratia et veritas facta est.*[z] Tempus autem reconciliationis fuit a nativitate Christi usque ad ascensionem in quo Christus per ea quae in carne sua gessit et pertulit Patri nos reconciliavit. Tempus autem peregrinationis fuit ab ascensione Christi usque ad finem mundi;[60] unde dicit Apostolus ad Cor ii: *Quamdiu sumus in hoc corpore peregrinamur a Domino, per fidem ambulamus et non per speciem;*[a] etsi enim Christum in sacramento totum habeamus, tamen sub specie peregrini eum videamus. Quaeritur ergo quare ecclesia non representat haec tempora eo ordine quo se invicem sunt secuta. Iterum quaeritur cur inter tempus revocationis et reconciliationis interponat ecclesia tempus deviationis quod tamen secundum ordinem temporis fuit ante tempus revocationis. Cuius triplex ratio sive triplex cause potest assignari. Prima est quod ecclesia Dei misericordiam maxime hominibus commendare intendit, unde prius f. 151 revocationem / representat quae est misericordiae quam deviationem quae est culpae; secunda causa: quod si ecclesia primo deviationem postea revocationem poneret, videretur homo in suo exilio revocationem meruisse et sic non ex misericordia sed potius ex meritis revocatus esse. Tertia causa est quia ordinatio ecclesiae respectum habet ad hominis justificationem et redemptionem; qui autem est in devio ad vocem admonitoris[61] gressum sistit et postea intelligens se errare ad viam rectam se convertit; unde Isaias: *Erunt aures tuae audientes vocem monentis post tergum.*[b] Dominus autem revocat nos dicens: *Revertere, revertere* etc.,[c] et in Ezechiel: *Revertimini* a viis vestris pessimis *et quare moriemini.*[d] Hoc ordine processit David qui cum Nathan propheta argueret eum de adulterio Bethsabee et de homicidio Uriae reversus ad se dixit: *Cogitavi vias meas et converti pedes meos* etc.[e] Hoc ordine processit ecclesia in distinctione temporum; primo posuit revocationem, postea inter revocationem et reconciliationem posuit deviationem ut homo intelligeret Dei revocantis misericordiam et sic homo quasi duos habens oculos sic intelligeret a quo[62] vili statu esset revocatus et ad quantam dignitatem per reconciliationem Christi est assumptus; ut intelligeret quod dicit propheta: *Ex te perditio tua, ex me est auxilium tuum.*[f]

Notandum autem quod tempus deviationis representat ecclesia a Septuagesima quae praetendit a dominica in qua cantatur: *Circumdederunt me*, usque ad octavas Paschae et illo tempore representat ecclesia Babylonicam captivitatem.[63] Fuerunt enim filii Israel in Babylonica captivitate septuaginta annis; septuagesimo autem anno data est licentia eis a Cyro rege Persarum revertendi unde gaudio magno gavisi sunt; sic et in sabbato Paschae data a Christo libertate rebaptizandi in signum laetitiae decantat ecclesia *Alleluia*.[64] Quia vero laboraverunt filii Israel in colligendis sarcinulis et praeparatione ad reditum, post *Alleluia* sequitur tractus; [65] sic et nos accepta spirituali laetitia per mortem et resurrectionem Christi, adhuc *in corpore mortis huius*[g] gemimus et laboramus; unde per totam septimanam paschalem responsorium decantamus in quo exprimitur qualiter laboribus Christi quos pro nobis sustinuit respondere debeamus, sed ad sabbatum resurrectionis venientes perfecta laetitia gaudebimus stola duplici decorati; in cuius rei figura sabbato in Albis duplex *Alleluia* decantat ecclesia quia tunc cum veris Hebraeis ad terram promissionis redibimus.

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[w] Luc. 2, 32.
[x] Is. 60, 1.
[y] Ps. 77, 5.
[z] Joan. 1, 17.
[a] 2 Cor.5 , 6.
[b] Is. 30, 21.
[c] Cant. 6, 12.
[d] Ezech. 18, 32.
[e] Ps. 118, 58.
[f] Osee 13, 9.

[58] Beleth, c. 81; Praepos., f. 10a.
[59] Praepos., f. 10a.
[60] Cf. *supra*, c. 4.
[61] Ms. amonitoris.
[62] Ms. aquam.
[63] Beleth, c. 77.

Sed oritur quaestio quare ecclesia tempus Babylonicae captivitatis representat et non tempus quo fuerunt filii Israel in Egypto servientes Pharoni in luto et in latere et palea. Videtur ergo potius hoc exilium debere representare quia in eo fuerunt duodecim patriarchae. Ad quod dicimus quod ad hanc quaestionem dupliciter potest respondere. Potest enim dici quod hoc tempus representatur in Quadragesima quia sicut quadrigentis annis fuerunt filii Israel in Egypto ita quadraginta diebus jejunamus: eadem est figura simplicis et compositi. Vel potest dici quod f. 152 mansio / filiorum Israel in Egypto non fuitc aptivitas quia spontanei patriarchae in Egyptum descenderunt. Praeterea non imputabitur peccatum ante legem sicut post, unde captivitas Babylonica magis representat nostram servitutem sub diabolo, qui instructi per legem naturae, scripturae et gratiae scienter et ex industria Dominum ad iracundiam provocamus, sic juste Nebuchodonosor, i.e. diabolo, in servitutem tradimur; et propter hoc Babylonica captivitas potius ab ecclesia quam Egyptiaca ad nostram instructionem representatur.

20. DE SEPTUAGESIMA

A Septuagesima suspendit ecclesia organa laetitiae sicut dixerunt filii Israel in Babylone: *Quomodo cantabimus canticum Domini in terra aliena*.[h] Haec autem cantica sunt *Alleluia*, *Te Deum Laudamus Gloria in excelsis Deo*, *Ite Missa est*. Si vero quaeratur quare resumat unum illorum sine alio, sicut in Cathedra beati Petri cantatur *Te Deum laudamus*, dicimus quod illud canticum *Te Deum* proprium est intronizandorum, unde cum in illo festo agatur de intronizatione Petri in Antiochena sede, merito in illo festo hoc canticum decantatur.[66] In Annuntiatione autem beatae Virginis, i.e. in die incarnationis etiamsi in septimana passionis contingeret, *Gloria in excelsis*, et *Te Deum* decantarentur, quia istud festum principium est et origo omnium festorum [67] unde angelus ait: *Ecce annuntio vobis gaudium magnum* etc.[h] In sancto autem die Jovis quando sanctum chrisma conficitur propter reverentiam caelestis unctionis *Gloria in excelsis* decantatur.

21. QUOD RATIONES JEJUNIORUM DIVERSAE SUNT

Postea videndum est de Sexagesima, Quinquagesima et Quadragesima. Sexagesima tempus est viduitatis ecclesiae; cum enim non sit praesens sponsus visibili specie plorat ecclesia de ejus absentia, sed ad consolationem dantur a sponso ei sex opera misericordiae cum decalogi impletione ut in his se exerceat donec ad amplexus sponsi traducatur.[68] Incipit autem hoc tempus a dominica qua cantatur: *Exurge quare obdormis Domine,*[i] et praetenditur usque ad quartam feriam infra octavas Paschae et respicit ista dominica tempus secundae aetatis quod fuit a Noe usque ad Abraham quia sicut tempore Noe renovatus est mundus per diluvium ita in Sexagesima renovatus est per baptismum; et quia illa dominica Romae fit statio ad Sanctum Paulum, collecta fit de eo,[69] scilicet: *Deus qui conspicis quia ex nulla nostra actione confidimus* etc.

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[g] Rom. 7, 24.

[h] Luc. 2, 10.

[64] Beleth, c. 77.

[65] *Ibid.*

[66] *Ibid.*, c. 79.

[67] *Ibid.*, c. 84.

22. DE QUINQUAGESIMA

Quinquagesima autem tempus significat remissionis. In vetere enim testamento quinquagesimus annus erat jubilaeus in quo plena fiebat remissio. Incipit autem hoc tempus a dominica qua cantatur: *Esto mihi* etc.,[j] et praetenditur usque ad Domini passionem et respicit tempus tertiae aetatis scilicet quod fuit ab Adam usque ad Moysem; hoc ergo tempus remissionis est quia per corporis afflictionem et abstinentiam salutarem plenam consequimur a Deo peccatorum remissionem.[70]

23. DE QUADRAGESIMA

Quadragesima vero tempus est christianae militiae, quia teste Job f. 153 *vita/hominum militia est super terram.*[k] Hoc autem tempus decima temporis est de quo debemus Deo solvere decimas[71] juxta consilium Apostoli dicentis: *Redimamus tempus quoniam dies mali sunt.*[l] Notandum tamen quod quidam inchoant jejunium a Quinquagesima sicut clerici qui sicut praecellunt aliis dignitate et ordine ita praecellere debent vita et sanctitate; alii vero inchoant jejunium a Sexagesima sicut canonici regulares quia adhuc ad majorem tenentur perfectionem quam clerici saeculares; alii vero inchoant a Septuagesima sicut monachi qui longe perfectioris vitae iter arripuerunt.[72]

24. DE JEJUNIIS QUATUOR TEMPORUM

Quia vero de jejuniis tractavimus congruum est adjungere de jejuniis Quatuor Temporum quae jejunia redduntur Domino loco primitiarum. Fiunt autem ista jejunia quater in anno et sic per paenitentiam emendemus quicquid in quatuor temporibus deliquimus. Quaeritur autem unde originem habuerunt ista quatuor jejunia. Ad quod dicimus quod ex vetere testamente,[73] unde dicit Zacharias cap. viii: *Haec dicit Dominus exercituum: jejunium quarti et jejunium quinti et jejunium septimi et jejunium decimi erunt domui Judae in gaudium et laetitiam solemnitates praeclaras.*[m] Aprilis secundum Hebraeos primus mensis est; jejunium ergo quarti est jejunium Junii; jejunabant enim septima et decima die ejusdem mensis quia tunc Moyses descendens de monte pro vitulo conflatili fregit tabulas testamenti et secundum Jeremiam tunc primo muri Jerusalem sunt rupti. Jejunium autem quinti representant Judaei quia tunc orta est seditio in populo propter exploratores terrae sanctae, unde jussi sunt montes non ascendere sed per quadraginta annos desertum circuire, ita ut omnes in deserto morerentur praeter

[i] Ps. 43, 23. Introitus Sexagesimae.
[j] Ps. 30, 3. Introitus Quinquagesimae.
[k] Job 7, 1.
[l] Eph. 5, 16.
[m] Zach. 8, 19.

[68] Beleth, c. 77; Praepos., f. 11b.
[69] Cf. Guill. Autiss., f. 63b.
[70] Beleth, c. 77; Guill. Autiss., f. 53c; Praepos., f. 11b.
[71] Praepos., f. 10b.
[72] *Ibid.*
[73] Beleth, c. 138.

Caleb et Josue.[n] In hoc etiam mense scilicet Augusto, ut dicunt Hebraei, Nabuchodonosor prius, postea vero Titus, templum Jerosolymae destruxerunt; in istorum casuum memoria se Judaei affligebant et jejunium quinti observabant. Jejunium vero septimi, i.e. Octobris, qui septimus est ab Aprili observabant quia tunc occisus est Godolias et reliquiae Jerusalem dissipatae.[o] Jejunium vero decimi observabant, i.e. Januarii, quia tunc Ezechiel in captivitate positus et populus captivorum audierunt rumores de subversione templi;[p] hos autem dies pollicetur Deus vertendos in gaudium et solemnitates praeclaras si tamen pacem et veritatem dilexerunt, unde subdicit Zacharias: *Veritatem tantum et pacem diligite.*[q] Nos autem similiter in anno quatuor jejunia celebramus sed aliis de causis.

Cum enim homo constet ex quatuor humoribus ex quibus insurgunt nobis delectationes carnales, in quatuor anni temporibus, scilicet vere, aestate, autumno, hieme, jejunia celebramus;[74] in qualibet parte temporis per tres dies, v.g. in vere tres, in aestate tres, in autumno tres, in hieme tres. Trinarius enim pertinet ad fidem Trinitatis vel [75] ad tres animae principales/potentias, scilicet rationabilem, irascibilem, concupiscibilem, ut f. 154 quicquid per totum anni circulum peccati et contagionis contraximus, per ista jejunia expiemus. Fiunt autem jejunia Quatuor Temporum his diebus, scilicet feria quarta et sexta et septima; feria quarta quia illa die fecerunt Judaei pactum cum Juda de Christo occidendo; sexta feria quia illa die occisus est Christus; septima vero quia die sabbato, sepulto Domino, *tristes erant apostoli* etc.[76] Haec jejunia dupla esse jejunia quia ante constitutionem jejuniorum Quatuor Temporum his tribus diebus jejunabant fideles, scilicet quarta, sexta, septima feria.[77] Celebrantur autem ista jejunia secundum antiquam ecclesiae consuetudinem in prima septimana Martii et hoc jejunium vernale dicitur; aestivale vero fit in secunda septimana Junii sed diffinitum est modo ab ecclesia quod vernale jejunium fiat post primam dominicam Quadragesiame, aestivale vero in septimana Pentecostes; autumnale vero non est mutatum quia semper fit in tertia septimana Septembris.[78] Distinguendum est autem in numero istarum septimanarum quia si Septembris incipit a prima feria, illa septimana dicetur prima et in tertia ab illo computata fient jejunia; si vero Septembris incipit a quinta feria vel [79] sexta, a sequenti dominica incipies numerare septimanas et in tertia fient ista jejunia. Jejunium vero hiemale fit in fine Adventus, scilicet in quarta septimana Decembris vel quandoque etiam in tertia, et hoc propter vigiliam Nativitatis Christi quae quandoque in illo jejunio concurrit; et sic anticipiatur quandoque illud jejunium.

25. DE DISTANTIA JEJUNIORUM

Quaeritur ergo quare ab uno jejunio in aliud computentur quatuordecim septimanae, v.g. a prima Martii septimana usque ad secundam Junii sunt xiiii septimanae computatis extremis; similiter a secunda Junii usque ad tertiam Septembris sunt xiiii septimanae computatis extremis; similiter autem a tertia Septembris usque ad quartam Decembris sunt xiiii septimanae computatis extremis. Ad hoc dicimus quod hoc fit pro

[n] Num., c. 14. [o] 4 Reg. 25, 25. [p] Ezech. 24, 1. [q] Zach. 8, 19.

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[74] Beleth, c. 134; Praepos., f. 37a.

[75] Ms. ut.

[76] Ms. tristes erant a. de. ne. s. dni. Apparently the first two lines of a hymn; perhaps a variant of our Easter hymn for the common of apostles: Tristes erant apostoli, De Christi acerbo funere, etc.

[77] Beleth, c. 134.

[78] Praepos., f. 36b.

[79] Ms. et.

mysterio generationis Christi quae per tres thesserecaedecades distinguitur.[80] Legitur enim in Matthaei quod: *Omnes generationes ab Abraham usque ad David xiiii, et a David usque ad transmigrationem Babylonis generationes xiiii, et a transmigratione usque ad Christum generationes xiiii; Christi autem generatio sic erat.*[r] Quartum autem temporis spatium, scilicet a quarta Decembris usque ad primam septimanam Martii non distinguitur per xiiii quia non nisi tres thesserecaedecades habuit generatio Christi. Distinguitur autem illud spatium per denarium septimanarum quia sine observatione decalogi nulli est salus; sunt enim a quarta septimana Decembris usque ad primam Martii decem septimanae computatis extremis. His autem jejuniis Quatuor Temporum celebrantur ordines; unde in quarta feria istorum jejuniorum duae leguntur lectiones ad missam, una f. 155 de veteri / altera de novo testamento quia monendi sunt ordinandi ut habeant scientiam veteris et novi testamenti.[81] Sexta autem feria unica legitur lectio per quam significatur quod unica est veritas utriusque testamenti,[82] scilicet Christus de quo legitur: *Veritas de terra orta est.*[s] In sabbato autem leguntur quatuor propter quatuor ordines ministrorum ordinandorum; sunt enim acoliti, subdiaconi, diaconi, sacerdotes officiis ecclesiae mancipati. Quinto autem legitur,[83] lectio Danielis scilicet: *Angelus Domini descendit cum Azaria in fornacem,*[t] ubi agitur de fornace et tribulatione quia omnes ordinandi probati esse debent in fornace tribulationis [84] quia *vasa figuli probat fornax et justos homines temptatio tribulationis*[u] ut sic ostenditur ordinati ministri esse illius qui dorsum posuit ad flagella.

26. DE DIE CINERUM; CAPITULUM CONTINENS MATERIAM SERMONIS

Consequenter de Capite Jejunii sive de Die Cinerum dicendum est. Unde primo quaerendum est quare cinere die illo capita aspergantur. Ad quod dicimus quod duabus potissime de causis, scilicet propter memoriam conditionis nostrae quia dictum est primo homini: *Terra es et in terram ibis.*[v] Secunda causa est propter memoriam peccatorum; nullum enim peccatorum tale est remedium sicut eorum continuata memoria. Et notandum quod sicut cinis cum ignitis carbonibus caput laedit, sic memoria peccati cum delectatione caput, i.e. mentem corrumpit; si autem in recordatione peccati sit aliqua scintillula concupiscentiae, cum lacrimis paenitentiae est extinguenda, unde Jeremias: *Quis dabit capiti meo aquam* etc.[w] Iterum notandum quod sicut ex cinere et aqua fit lavacrum quod lexiva dicitur ad abluendas sordes vestium, sic ex cinere spirituali, i.e. recordatione peccati, et lacrimis, i.e. dolore animi, fit spiritualis ablutio animarum, unde Dominus per Isaiam: *Dabit Dominus coronam pro cinere, oleum gaudii pro luctu, pallium laudis pro spiritu maeroris;*[x] unde Jeremias: *Filia populi mei accingere cilicio, conspergere cinere, planctum unigeniti fac tibi.*[y] Iterum notandum quod ejectionem primorum parentum de paradiso representat ecclesia illa die in ejectione paenitentium quibus datur cilicium in signum pellicaearum tunicarum quas habuerunt primi parentes post peccatum.[85]

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[r] Matt. 1, 17, 18.
[s] Ps. 84, 12.
[t] Dan. 4, 49.
[u] Eccli. 27, 6.
[v] Gen. 3, 19.
[w] Jer. 9, 1.
[x] Is. 61, 3.
[y] Jer. 6, 26.

[80] Praepos., f. 37a.
[81] Beleth, c. 134.
[82] *Ibid.*
[83] Ms. *add.* scilicet.
[84] Praepos. 37b.
[85] Beleth, c. 89; Praepos., f. 12a.

27. DE MEDIA SEPTIMANA QUINQUAGESIMAE

Consequenter quaeri potest, cum dicat Salomon: *Musica in luctu importuna narratio est,*[z] cur quarta dominica Quadragesimae ecclesia fideles ad gaudium invitet dicens: *Laetare Jerusalem et conventum facite omnes qui diligitis eam* etc.[a] Ad hoc duplex ratio potest assignari; potest dici quod ecclesia more piae matris inter adversa quae pro ipso sustinet, utpote lamenta, jejunia et alia salutaria exercitia, ne deficiat, intuitu aeternorum consolatur; unde filiis suis aeterna praelibando demonstrat, sicut mater flenti filio ostendit pulchram tunicam dicens: Haec pulchra tunica vestieris in Pascha; et sic consolatur filium. Sic et ecclesia filios consolatur. Vel potest dici quod ista septimana septima est in Septuagesima unde quietem sanctorum f. 156 significat quem habituri sunt sancti / in septima aetate stola animi decorati;[86] et quia spem habent certissimam habendi et alteram, jam de utraque gloriatur, unde in patria sanctorum patrum ecclesiae dicitur: *Laetare Jerusalem;* ac si diceret: O ecclesia omnia adversa patienter sustine, quoniam *non sunt condignae huius temporis passiones ad futuram gloriam quae revelabitur in nobis.*[b] Unde congrue legitur epistola ad Galatas, scilicet: *Scriptum est quoniam Abraham duos filios habuit unum de ancilla et unum de libera;*[c] *illa autem quae sursum est Jerusalem libera est quae est mater nostra;*[d] est libera, inquam, et a paena et a culpa. Ad quam libertatem perveniet militans ecclesia in qua spe modo consolatur, et quia huius hereditas et huius aeterna habitatio in Sacra Scriptura promittitur, pane Sacrae Scripturae reficitur; unde congrue legitur evangelium ubi Dominus de quinque panibus et duobus piscibus satiavit quinque milia hominum. Omnia autem alia quae sunt in officio illius diei ad idem sunt mysterium pertinentia.

28. DE INTROITU PASSIONIS

Tertio quaeri potest cur sabbato post *Laetare Jerusalem* in vespere incipiat passio Christi, cum passus fuerit die Parasceves, i.e. sexta feria post Ramos Palmarum. Ad quod dicendum est quod sexta feria ante quintam dominicam Quadragesimae resuscitavit Lazarum de quo miraculo incitati sunt Judaei ad invidiam; unde in crastino collegerunt principes et pharisaei consilium ut Jesum traderent *et dolo tenerent.*[e] Unde in dominica sequente legitur quod Judaei *tulerunt lapides ut jacerent in eum; Jesus autem abscondit se et exiit de templo.*[f]

29. QUALITER PASSIO CHRISTI PRAEFIGURATA FUIT IN VETERE TESTAMENTO

Post quaeritur cur quinta dominica legitur epistula ad Hebraeos: *Christus assistens pontifex futurorum bonorum,*[g] ubi [87] agitur de ingressu in Sancta Sanctorum. Ad quod dicimus quod passio Christi est ingressio paradisi, unde cum in sabbato praecedente quintam dominicam Quadragesimae incipiat passio quia miraculum de resurrectione Lazari quod legitur sexta feria ante, eo die legitur factum quo ab ecclesia est recitatum, patet quod ab eo incipit ingressio paradisi a quo incipit passio. Unde congrue legitur epistola de ingressu in Sancta Sanctorum ubi ostenditur quod Christus per velamen carnis suae et *proprium sanguinem introivit in sancta, aeterna redemptione inventa.*[h] In introitu autem missae congrue cantatur: *Judica me Deus,*[i] ubi petit Christus causam suam ab aliis discerni quia non pro merito suo sed pro totius mundi peccatis patiebatur. Reliqua omnia illius diei ad hoc idem sacramentum sunt pertinentia.

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[z] Eccli. 22, 6.
[a] Introitus, cf. Is. 66, 10.
[b] Rom. 8, 18.
[c] Gal. 4, 22.
[d] Gal. 4, 26.
[e] Matt. 26, 4.
[f] Joan. 8, 59.
[g] Heb. 9, 11.

[86] Ruperti Tuit. IV, 13; Beleth, c. 93 Praepos., f. 15a; Guill. Autiss., f. 57b.

[87] Ms. ut.

30. DE DIVERSIS MYSTERIIS IN RAMIS PALMARUM

Postea dicendum est de Ramis Palmarum ubi primo quaeritur quare illa die voluit Dominus intrare Jerosolymam; cur etiam cum tanto apparatu voluit recipi; cur etiam duos discipulos ad solvendam asinam et pullum ejus; et cur super utrumque sedere voluit Dominus. Plena quippe sunt omnia divinis mysteriis quorum omnium haec est summa. Legitur in Exodo xii quod dixit Dominus ad Moysem: *Decima die primi* f. 157 *mensis tollat unusquisque agnum per domos et familias suas, quod si / minor fuerit numerus ut sufficere non possit ad esum agni, assumat vicinum suum qui junctus est domui suae juxta numerum animarum quae sufficere possunt ad esum agni . . . et servabitis eum usque ad quartam decimam diem mensis huius; immolabitque eum universa multitudo filiorum Israel ad vesperum.*[j] Ut autem adimpleretur verbum quod dicit Dominus per Jeremiam: *Ego quasi agnus qui portatur ad victimam,*[k] ut etiam ostenderetur Christus verus agnus *qui tollit peccata mundi*[l] per agnum typicum figurari, decima luna intravit Jerosolymam et cum gaudio recipi voluit quia spontaneus ut immolaretur venit.[88] Luna autem quarta decima immolatus est, i.e. ipsius immolatio quarta decima ad vesperam inchoata est quia tunc captus et ligatus est.

Eveniens autem ad salvandas gentes a monte Oliveti misit duos discipulos quia de celsitudine divinae misericordiae quae per montem Oliveti intelligitur duos ordines praedicatorum ad solvendam asinam et pullum, i.e. judaicum et gentilem populum,[89] destinavit. In quo facto nostorum praelatorum arrogantia arguitur qui ad solvendas mille asinas, i.e. mille animas peccandi consuetudine ligatas, presbyterum unum et garcionem miserunt, cum Dominus pro solvenda asina duos miserit discipulos providos et discretos. Alii vero struebant vestimenta sua in via, i.e. corpora in via quae est Christus martyrio offerebant; alii vero caedebant ramos de arboribus, i.e. sententias et laudes divinas de libris veteri et novi <testamenti> carpebant. *Turbae autem quae ibant et quae sequebantur, clamabant dicentes: Hosanna filio David,*[m] quia patres veteris et novi testamenti non nisi in fide mediatoris sunt salvati. Utrique autem pullo et asinae Dominus insedit quia de utroque populo Christum recipientes et sessorem habentes, in Jerusalem, i.e. ad aeternae pacis visionem, perducit. Illa die legitur epistola ad Philippenses: *Hoc sentite in vobis quod et in Christo Jesu,*[n] ubi in figura[90] humilitas et obedientia Christi usque ad crucis patibulum ostenditur; ad haec autem sacra reliqua officii illius referuntur.

31. DE COENA DOMINI ET DE DIVERSIS SACRAMENTIS QUAE CELEBRANTUR IN ECCLESIA ILLA DIE

Consequenter de officio quintae feriae post Ramos Palmarum dicendum est. Haec est enim quarta decima dies mensis primi quando agnus paschalis secundum legem debet immolari ad vesperum et de ejus sanguine uterque postis et superlimina reliniri,[o] et propter hoc ea die chrisma consecratur quo baptizati inunguntur. Ista dies est una de praecipuis solemnitatibus anni; nam sacramentum nostrae redemptionis est institutum. Ea etiam die fit reconciliatio paenitentium qui in Capite Jejunii ab ecclesia fuerunt exclusi in similitudinem ejectionis primorum parentum de paradiso.[91] De sex autem ablutionibus ea die solemnizat ecclesia quae in tribus materiis [92] fieri habent, scilicet in aqua, in lacrimis, in sanguine. In aqua vero dupliciter, nam alia est aqua materialis, alia spiritualis. Materialis / f. 158 vero aqua est ad ablutionem pedum; de <qua> aqua legitur in Joannis: *Misit Jesus aquam in pelvim et coepit lavare pedes discipulorum suorum et extergere linteo quo ipse erat praecinctus.*[p] Illa enim die instituit Dominus ablutionem pedum ad humilitatis exemplum.[93] Altera est aqua spiritualis de qua legitur in Ecclesiastico: Sicut aqua extinguit ignem ita eleemosyna peccatum,[q] unde dicitur eleemosyna ab eloy quod est Deus et moys quod est aqua, inde eleemosyna quasi aqua Dei; de qua dicit Dominus in Matthaei: *Date eleemosynam et omnia munda sunt vobis.*[r] Secunda ablutio fit in lacrimis sed aliae sunt lacrimae quae profluunt ex oculis ad lamentum in reconciliationem paenitentium, aliae quae profluunt ex arboribus ad sacramentum confectionis ad unctionem fidelium. Balsamus autem est gummi quod decurrit ab arbore quae dicitur balsamus ex quo cum oleo chrisma conficitur, per quae intelliguntur duo necessaria christiano, scilicet conscientia et fama; per oleum intelligitur nitor conscientiae, per balsamum vero odor bonae famae.[94] Tertia ablutio fit in sanguine quae similiter duplex illa die recolitur; una enim est sanguinis in pretium, altera vero ejusdem sanguinis in nostrae fragilitatis remedium; idem enim sanguis Christi qui semel effusus est in pretium, cotidie in altari sumitur in remedium; unde in evangelio legitur: Hic calix novi testamenti in meo sanguine.[s] Hoc sanguine lavit nos Christus unde Joannes in canonica: Christus *dilexit nos et lavit nos a peccatis nostris in sanguine suo.*[t] De istis ergo sex ablutionibus solemnizat ecclesia. Unde propter reverentiam christianae unctionis quae ea die conficitur *Gloria in excelsis Deo*, celebrante episcopo vel archiepiscopo, decantatur.[95]

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[h] Heb. 9, 12.
[i] Ps. 42, 1.
[j] Ex. 12, 3–4, 6.
[k] Jer. 11, 19.
[l] Joan. 1, 29.
[m] Matt. 21, 9.
[n] Phil. 2, 5.

[88] Praepos., f. 16a.

[89] Ruperti Tuit. V, 7; Guill. Autiss., f. 60b.

[90] Ms. ira.

Introitus autem missae illius est de gloria crucis, scilicet: *Nos autem gloriari oportet* etc.,[u] quasi dicat ecclesia: Crux Christi *Judaeis scandalum, gentibus autem* videtur *stultitia*, nobis autem credentibus *est Dei virtus et Dei sapientia.*[v] Epistola legitur ad Corinthios: *Convenientibus vobis in unum* etc.,[w] ubi agitur de institutione sacramenti Corporis et Sanguinis Jesu Christi. Evangelium similiter pertinet ad ablutiones de quibus dictum est, ubi dicitur: *Qui lotus est non indiget nisi ut pedes lavet sed est mundus totus,*[x] i.e. qui mundus est ab actu peccati non indiget nisi ut pedes lavet, i.e. <ut> sit mundus ab affectu peccandi. In missa autem non datur pacis osculum ne fideles factum Judae imitari videantur, qui ea nocte osculo tradidit Dominum.[96] Eadem die altaria denudantur quia discipuli in passione relicto Domino ab eo fugerunt; postea lavantur vino et aqua quia de Christi

[o] Ex. 12, 7.
[p] Joan. 13, 5.
[q] Cf. Eccli. 3, 33.
[r] Luc. 11, 41.
[s] Cf. Luc. 22, 20.
[t] Apoc. 1, 5.
[u] Cf. Gal. 14.
[v] 1 Cor. 1, 23–24.
[w] 1 Cor. 11, 20.
[x] Joan. 13, 10.

[91] Beleth, c. 95.
[92] Ms. materialiter.
[93] Guill. Autiss., f. 61c.
[94] Praepos., f. 19a; Guill. Autiss., f. 62a.
[95] Praepos., f. 18b.
[96] Beleth, c. 95.

latere duo exierunt sacramenta sanguis redemptionis et aqua abolutionis per quae mundatur ecclesia.[97]

32. DE VIGILIIS TENEBRARUM

Notandum autem quod tres vigiliae noctium triduanam Domini
f. 159 significant sepulturam et tres horas tenebrarum / in quibus facta est generalis eclipsis in passione quia teste Luca [y] *obscuratus est sol et tenebrae factae sunt super universam terram* ab hora sexta ad horam nonam.[98]

33. QUOT DEBEANT ACCENDI CANDELAE IN TENEBRIS

De numere autem candelarum variae sunt consuetudines ecclesiarum; quaedam enim accendunt septuaginta duae, aliae viginti quatuor, aliae et aliae secundum alium et alium numerum.[99] Rectius tamen videntur illae facere quae accendunt tredecim propter duodenarium apostolorum et monadem Jesu Christi. Significat autem successiva extinctio candelarum defectum fidei apostolorum.[100] Vigiliae autem et horae diei sine principio solito et fine cantantur quia ille qui est alpha et omege, i.e. principium et finis a nobis in passione est substractus.[101] Leguntur illus noctibus Threni Jeremiae quia per peccatum mortis Christi Jerusalem subversa fuit a Romanis sicut tempore Jeremiae subversa fuit a Caldeis; inde in Threnis legitur: *Peccatum peccavit Jerusalem propterea instabilis facta est;* [z] cuius captivitatem quadruplici Jeremias deploravit alphabetico; vel aliter sicut Jeremias deploravit mortem Josiae regis, ita et nos deploramus mortem Christi.[102] Versus autem illi qui cantantur in fine: *Qui passus advenisti* etc. significant lamentationes sanctarum mulierum mortem Christi deplorantium. Lectionibus autem non praemittitur *Jube Domine benedicere*, nec subditur *Tu autem*, quia per mortem substractus est nobis pastor qui internam dat benedictionem;[103] unde in Exodo ait: Applica filios Aaron ad ostium tabernaculi et ego benedicam eis.[a] Ignis autem qui reservatur significat fidem beatae virginis nusquam fuisse extinctam, vel virtutem divinitatis quae in passione fuit occultata; unde Habacuc: *Ipsi abscondita fortitudo ejus;* [b] vel etiam quia Christus post mortem descendit ad inferos. Ignis ille reservatus potest significare Christum quem viderunt antiqui patres qui in limbo erant ad se descendentem, tunc enim *exortum est in tenebris lumen rectis*.[c]

34. DE MODO CANTANDI HORAS CANONICAS TRIBUS DIEBUS ANTE PASCHA

Quaeritur autem cur alta voce cantentur matutinae tenebrarum, horae vero diurnae quasi sub silentio decantantur. Ad hoc dicimus quod nocturnum officium significat vaticinium prophetarum quo aperte et alta voce ea quae ventura erant de Christo praedixerunt. Horae vero diei quibus in evangelio comparantur apostoli submissae decantantur quia in passione eorum cessavit praedicatio.[104]

35. DE DIE MORTIS CHRISTI

Consequenter de officio diei Parasceves dicendum est. Circa horam nonam ad ecclesiam veniunt fideles representantes hoc quod Joseph et

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[y] Luc. 23, 44–45. [z] Thren. 1, 8. [a] Cf. Ex. 40, 12. [b] Hab. 3, 4. [c] Ps. 111, 4.

[97] Beleth, c. 104; Guill. Autiss., f. 61d.

[98] Beleth, c. 100.

[99] Beleth, c. 101.

[100] *Ibid.*

[101] Praepos., f. 22a.

[102] Beleth, c. 101; Praepos., f. 22b.

[103] Beleth, c. 101; Praepos., f. 22a.

[104] Beleth, c. 102.

Nicodemus venerunt ad sepeliendum Dominum. Legitur autem primo lectio de Osee, haec scilicet: *In tribulatione sua mane consurgent ad me, venite et revertamur ad Dominum quia ipse cepit et sanavit nos, percutiet et curabit nos, vivificabit*
f. 160 *nos post duos dies et tertia die suscitabit nos.*[d] / Ibi aperte agitur de Christi resurrectione ut passio Christi non terreat quos spes resurrectionis laetificat. Postea sequitur tractus de Habacuc qui apertius caeteris de passione prophetavit ubi dixit: *Cornua in manibus ejus.*[e] Postea legitur lectio Exodis de agno paschali per quod intelligitur immolatio Jesu Christi. Secundum autem, secundum Joannem passio; hac de causa quia Joannes praesens fuit quando Christus in cruce pendens matrem virginem virgini commendavit, unde congruum testimonium ferre potuit.[105] Ea die fiunt speciales orationes pro omni statu ecclesiae quia postquam Christus oravit pro discipulis dixit:[106] *Domine non pro his rogo tantum sed pro his qui per verbum eorum credituri sunt in me.*[f] In oratione autem quae fit pro Judaeis genua non flectamus quia ipsi flectantes genua Domino illudebant.[107] Notandum etiam quod illa die Corpus Christi non conficitur cujus plures causae super illud Jeremiae: *Repulit Dominus altare suum*[g] assignantur. Haec autem causa ad praesens sufficiat quia ea die Hostia sine velamine est oblata; ideo ea die sub velamine non offertur.[108] Notandum autem quod quando crux ante populum defertur[109] tres antiphonae decantantur, scilicet, *Popule meus*, *Quia eduxi te*, *Quid ultra*, quod significat triplicem scripturam tituli:[110] *Erat enim scriptus hebraice, graece et latine.*[h] A choro tantum respondetur graece et latine quoniam tertia lingua, scilicet hebraea, silet.[111] Quod vero crux eo die discooperitur, significat mysteria legis in morte Christi esse revelata. Tenebrae autem quae factae sunt eo moriente significat caecitatem Judaeorum. Quod vero *os ex eo non est* comminutum,[i] significat quod virtus ejus ex passione non est comminuta. Scissio autem veli reserationem significat figurarum; quia autem in silentio finitur officium, quia nondum redditum est ecclesiae caput suum.

36. DE SABBATO PASCHAE

Consequenter de officio paschalis sabbati dicendum est quod secundum excellentiam Sabbatum dicitur; sicut enim completis operibus creationis septimo requievit ab omni opere quod patrarat, ita completis operibus recreationis septimo die in sepulchro requievit.[112] Incipit autem officium illius a benedictione cerei quae a diacono habet cantari, in figura ejus quod sexus inferior, scilicet mulier, resurrectionis gaudium nuntiavit.[113] Unde diaconus in modum crucis grana incensi ibi affigit quia mulieres ad unguendum crucifixum grana portaverunt unguenta et aromata.[114] Ea vero die generalis in ecclesia celebratur baptismus eo quod suam efficaciam fortitus sit ex passione Jesu Christi; unde legitur prima lectio de Genesi quae pertinet ad sanctificationem baptismi, unde subditur in lectione: *Spiritus Domini ferebatur super aquas.*[j] Alia autem causa lectio legitur de Genesi, scilicet: *In principio creavit caelum et terram* etc.,[k] quia mystice per opera creationis intelliguntur opera recreationis quibus completis ea die requievit salvator. Leguntur autem lectiones sine titulo tum quia Christus caput nostrum nondum est nobis redditum,[115] tum etiam propter neophytos f. 161 / qui nondum etiam adhuc habent notitiam scripturarum quibus non expedit praemittere nomina librorum. Secunda lectio similiter pertinet ad baptismum quae est Exodi, haec scilicet: *Factum est autem in vigilia matutina* etc.,[l] ubi agitur de submersione Egyptorum et de transitu maris Rubri, per quae figuratur remissio peccatorum in baptismo et transitus de tenebris peccatorum ad paenitentiae desertum. Cum enim teste Apostolo [m] Christus mortuus sit propter peccata nostra et ressurexit propter justificationem nostram, debemus et nos transire ad claritatem virtutum. Notandum autem quod officium huius diei in vespere debet celebrari quia pertinet ad resurrectionem; similiter et vigiliae illius noctis non debent appellari tenebrae sed potius gloria resurrectionis. Tertia lectio legitur de Isaia, scilicet: *Apprehendent septem mulieres virum unum*,[n] in qua ostenditur quod gratiae Spiritus Sancti et dona, etsi *in Christo* dentur *baptizatis*,[o] plenissime tamen fuerunt in Christo; unde super praedictum locum Isaiae dicit Origen: Spiritus Sanctus in aliis sanctis invenit hospitium tribulationis, in solo Christo habuit domicilium quietis.[116] Altera vero lectio est Deuteronomi, haec scilicet: *Scripsit Moyses canticum et docuit filios Israel*,[p] quae pertinet ad instructionem renatorum. Quinta vero lectio est Baruch,[117] haec scilicet: *Audi Israel mandata vitae*,[q] ubi agitur de promissione premiorum quae per Christi passionem baptizatis fidelibus largiuntur.

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[d] Osee 6, 1.
[e] Hab. 3, 4.
[f] Joan. 17, 20.
[g] Thren. 2, 7.
[h] Joan, 19, 20.
[i] Cf. Joan. 19, 36.
[j] Gen. 1, 2.
[k] Gen. 1, 1.

[105] Ruperti Tuit. VI, 6.
[106] *Ibid.*
[107] Beleth, c. 98; Praepos., f. 23a.
[108] Guill. Autiss., f. 62b.
[109] Ms. *add.* quod.
[110] Beleth, c. 98; Praepos., f. 23a.
[111] Beleth, c. 98; Praepos., f. 23a.
[112] Beleth, c. 105.
[113] Beleth, c. 109; Guill. Autiss., f. 62b.
[114] Guill. Autiss., f. 62b.

Lectis autem lectionibus, vadit processio ad fontes cum litaniis. Immittitur autem cereus fonti ad designandum quod omnem efficaciam habet unda baptismi a Christo quo tactu suae mundissimae carnis vim regenerativam contulit aquis.[118] Praeterea cereus figurat columnam ignis et nubis quae filiis Israel praestabat refrigerium contra calorem et illuminationem contra tenebras noctis, sic virtute Christi datur baptizatis refrigerium contra incentiva vitiorum et illuminatio contra tenebras caecitatis et ignorantiae.[119] Sanctificatis autem fontibus redit processio ad chorum cum litaniis et sine introitu a *Kyrie eleison* incipit missae officium quod pertinet ad gloriam resurrectionis. Postea vero alta voce cantatur *Gloria in excelsis Deo* et tunc pulsantur omnes campanae in signum universalis laetitiae de resurrectione. Postea legitur epistola ad Colossenses: *Si consurrexistis cum Christo* etc.[r] Postea alta voce cantatur *Alleluia;* et quia grandis restat labor post primam resurrectionem donec veniatur ad secundam, ideo sequitur tractus: *Laudate Dominum omnes gentes* etc.[s] Postea legitur evangelium secundum Matthaeum: *Vespere autem sabbati* etc.[t] Illa die non cantatur offerenda quia oblatus est Christus qui est vera hostia, et etiam propter hoc quod sanctae mulieres latenter et cum silentio ad monumentum venerunt cum aromatibus.[120] In illa missa pacis osculum f. 162 non datur quia Christus qui est pax / nostra nondum a mortuis suscitatur.[121]

37. ALIA QUAESTIO DE EODEM DIE

Sed cur ecclesia illa die de resurrectione solemnizat cum Christus adhuc illa die mortuus jaceret in sepulchro? Ad quod dicimus quod Christi resurrectio causa est spiritualis resurrectionis renatorum, unde, ut causa suo effectui conjungatur, ea die de resurrectione solemnizat ecclesia. Praeterea officium illius diei pertinet ad noctem sequentem, unde dicitur in benedictione cerei: Haec nox est etc. Communio non dicitur in illa missa quia in crastina exspectatur generalis communio omnium fidelium. Et quia fructus passionis et resurrectionis Christi maxime pervenit ad gentes, ideo in Vesperis hortatur gentes ad laudem dicens: *Laudate Dominum omnes gentes* etc.; quae ita breves decantantur propter neophytos quibus nihil difficile vel prolixum est a sacerdotibus injungendum, unde in Cantico: *Soror mea parvula est et ubera non habet.*[u]

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[l] Ex. 14, 24. [m] I Cor. 15, 3. [n] Is. 4, 1. [o] Rom. 6, 3. [p] Deut. 31, 22. [q] Bar. 3, 9. [r] Col. 3, 1. [s] Ps. 116, 1. [t] Matt. 28, 1.

[115] Beleth, c. 110.

[116] *In Isaiam Homilia*, III; P. G. 13, 229.

[117] Ms. Jeremiae.

[118] Beleth, c. 110; Petri Lombardi, *Sententiarum*, IV, dist. iii, c. 5.

[119] Beleth, c. 110.

[120] Beleth, c. 111; Praepos., f. 30a.

[121] Beleth, c. 111; Praepos., f. 30a.

Restat autem ut adhuc pauca de gloria resurrectionis dicamus. Unde notandum quod filii Israel quadruplex phase celebraverunt, primum in Ramasse, secundum in deserto, tertium in Galgal, quartum in terra promissionis sub Josia.[122] Sic et nos debemus quadruplex phase celebrare, primum in contritione peccatorum quae figuratur per Ramasse, — interpretatur enim commotio tineae; secundum debemus celebrare in deserto ubi debemus procedere de bono in melius, de virtute in virtutem; tertium vero in Galgal quod interpretatur revelatio; illud phase debet esse in receptione primae stolae quando revelata facie gloriam Domini contemplabimur; quartum in terra promissionis sub Josia qui interpretatur salus Domini vel fortitudo Domini; hoc autem celebrabimus in patria quando erimus utraque stola decorati.

In die autem Resurrectionis in introitu missae loquitur Filius ad Patrem dicens: *Resurrexi et adhuc tecum sum* etc.[v] et subditur versiculus de passione: *Domine probasti me* etc.[w] Legitur autem epistola ad Corinthios ubi ad exemplum capitis nostri invitamur ad depositionem vetustatis culpae sicut caput nostrum deposuit vetustatem paenae. Caetera omnia quae sunt in missa pertinent ad gloriam resurrectionis sicut versiculus ille: *Haec dies* et *Alleluia*, *Pascha nostrum* etc.[123] Legitur autem evangelium Marci qui expressius caeteris de resurrectione locutus est, unde per leonem significatur. Notandum autem quod per totam septimanam in vesperis fit processio ad fontes in representationem illius facti quod legitur in Exodo: *Sumpsit Maria prophetes soror Aaron tympanum in manu, egressaeque sunt omnes mulieres post eam cum tympanis et choris quibus praecinebat dicens: cantemus Domino gloriose enim* etc.[x] Item notandum quod a Pascha usque ad octavas Pentecostes non recitantur in matutinis nisi tres psalmi et tres lectiones et tria responsoria f. 163 eo quod adhuc / novella est ecclesia, unde nulla difficilia tunc praecipiuntur in ecclesia.

38. DE TEMPORE RECONCILIATIONIS

Consequenter de tempore reconciliationis dicendum est. Fuit autem tempus reconciliationis a tempore nativitatis Christi usque ad ascensionem ejusdem. Hoc autem tempus representat ecclesia a Pascha usque ad octavas Pentecostes, et est hoc tempus figura illius temporis quo ecclesia perenni sponso aeternaliter copulabitur. Huius autem temporis prima septimana communis est duobus temporibus, scilicet tempori deviationis et tempori reconciliationis, unde in vigilia Paschae post *Alleluia* sequitur tractus et per totam septimanam usque ad sabbatum in Albis cantatur responsorium quod laborem paenitentiae et afflictionem significat.[124] In sabbato autem in

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[u] Cant. 8, 8.
[v] Ps. 138, 18.
[w] Ps. 138, 1–2.
[x] Ex. 15, 20.

[122] Cf. Guill. Autiss., f. 63a: triplex enim pascha celebraverunt Judaei, . . . Ramasse . . . Syna . . . Galgal. . . .

[123] Graduale missae.

[124] Beleth, c. 112.

Albis duplex causa datur *Alleluia* quia in octava resurrectionis erimus utroque homine gloriosi. Quaerenda est autem ratio huius nominis Pascha. Secundum ergo Augustinum[125] idem sonat pascha quod phase quod interpretatur transitus; secundum Ambrosium[126] pascha dicitur a pathyn graeco quod idem est quod passio. Secundum alios vero in hoc nomine pascha concurrunt duae linguae, i.e. nomina duarum linguarum scilicet pathyn quod est graecum et phase quod est hebraeum;[127] inde pascha quasi transitus vel per passionem.

Quatuor enim de causis pascha dicitur transitus; tunc enim transivit populus Israel de Egypto per mare Rubrum et ecclesia transit de infidelitate ad fidem per baptismum quantum ad neophytos qui sabbato Paschae baptizantur; paenitentes autem transeunt per confessionem de vitiis ad virtutes. Christus autem caput nostrum transivit de morte ad vitam et nos in generali resurrectione transire faciet de corruptione ad incorruptionem.[128] Quaeri autem potest cur potius in Pascha quam in alio tempore fit reconciliatio discordantium. Ad quod dicimus quod istud fit cum ratione temporis cum ratione sacramenti; ratione temporis quia illud est tempus reconciliationis; ratione sacramenti quia omnes fideles in Pascha debent recipere sacramentum Corporis Christi quod est sacramentum dilectionis. Item quaeritur quare in tota septimana paschali non decantantur in ecclesia *Quicumque vult*. Ad quod dicimus quod illud tempus significat octavam aetatem in qua fides evacuabitur et ideo pro illo tempore symbolum fidei non decantatur. Si vero quaeratur cur ergo in missa *Credo in unum Deum* cantatur, respondendum est quod hoc fit ad instructionem neophytorum.[129]

39. DE VARIIS FESTIS SANCTORUM TEMPORE ILLO CONCURRENTIBUS

Item quaeritur de festis concurrentibus in illo tempore, sicut de festo Philippi et Jacobi, de festo Joannis ante portam Latinam et de festo beati Marci evangelistae; cur de martyribus non solemnizat ecclesia. Ad quod dicimus quod illo tempore tantum de agone Christi solemnizat ecclesia quia in persona Christi dicit Isaias: *Torcular calcavi solus* etc.[y] Ipse enim solus *mortem moriendo destruxit et vitam resurgendo reparavit*.[130] Unde in toto illo
f. 164 tempore cantatur / illa antiphona: *Filiae Jerusalem venite et videte martyres* etc.[131]

40. DE TEMPORE ROGATIONUM

Postea videndum est de litaniis. Est autem una major quae fit in festo beati Marci quae ideo dicitur major quia instituta est a majore, i.e. a beato Gregorio, scilicet pro peste inguinaria,[132] qui de ecclesia beati Petri vidit angelum Dei super castrum Crescentiae[133] tergentem gladium suum a sanguine ex qua visione intellexit plagam cessasse. Altera vero dicitur minor quae fit tribus diebus ante Ascensionem quae instituta fuit a beato Mamerto Viennensi archiepiscopo, scilicet pro terrae motu admovendo et

[y] Is. 63, 3.

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[125] *Ennaratio in Psalmum*, lxviii; P. L. 36, 841–842.

[126] *De Cain et Abel*, I, 8; P. L. 14, 451.

[127] Petri Manducatoris, *Hist. Schol. in Evang.*, c. 147.

[128] Beleth, c. 113.

[129] *Ibid.*

[130] Praefatio Missae in die Resurrectionis.

[131] Ant. ad Laudes, comm. martyrum tempore paschali.

[132] Cf. Praepos., f. 35a.

[133] Mausoleum Adriani; it bore the name, Castrum Crescentii (Crescentiae) from the tenth century and after; cf. L. Duchesne, *Les premiers temps de l'état pontifical* (Paris, 1904), p. 364. Cf. also: *Liber Pontificalis*, ed. Duchesne, II, p. 368.

propter lupos et serpentes qui intrantes civitatem devorabant homines.[134] Unde obtinuit beatus Mamertus quod in tota ecclesia citra Alpes celebraretur officium in ista litania. Idem est autem litania quod supplicatio quae ab omnibus debet celebrari eo quod omnes tangit et pro peste, pro fame, pro clade amovenda a patria.

41. DE RATIONE OFFICII IN VIGILIA ASCENSIONIS

Sequitur de vigilia Ascensionis ubi quaeritur cur illud evangelium legitur: *Sublevatis in caelum oculis dixit* etc.,[z] quod evangelium factum est in Coena Domini. Ad quod dicendum est quod sicut Christus in coena migraturus ad invisibilia aeternae majestatis oravit pro discipulis, ita in vigilia ascensionis quando instabat ascendendi ad Patrem pro eisdem intelligitur orasse; et ideo merito tunc illud evangelium repetitur. Notandum autem quod tria festa erant in lege, scilicet Pascha, et Pentecostes et Scenophegia quae interpretatur fixio tabernaculi;[135] ad quorum exemplum representat ecclesia tria festa, Pascha, Pentecostes quod celebratur quinquagesimo die a Pascha quia tunc datus est Spiritus Sanctus qui est lex perfectae libertatis sicut quinquagesimo die data est lex Moysi Judaeis; Ascensio autem in loco Scenophegiae quia tunc facta est fixio tabernaculi quando *in sole posuit tabernaculum suum* [a] et naturam nostram exaltavit super choros angelorum sedens ad dexteram Patris.

42. DE TEMPORE PEREGRINATIONIS

Post praedicta, de tempore peregrinationis dicendum est. Fuit autem tempus peregrinationis a tempore ascensionis usque ad finem mundi. Hoc autem tempus representat ecclesia ab octavis Pentecostes usque ad Adventum Domini. Hoc autem tempus peregrinationis est quia, quamdiu sumus in hoc mortali corpore, *peregrinamur a Domino;* [b] unde legitur liber Regum in quo agitur de bellis usque ad Kalendas Augusti; usque ad Kalendas Septembris legitur liber Sapientiae, sed quia iterum in hoc bello patientia nobis est necessaria, ideo a Kalendis Septembris usque ad Kalendas Octobris legitur liber Job, Tobias, Esther, Ruth, Esdras, Judicum; et quia in adversis debemus laudare Deum et strenui esse in agendis ideo a Kalendis Octobris usque ad Kalendas Novembris legitur liber
f. 165 Machabaeorum; a Kalendis Novembris usque ad Adventum / legitur Ezechiel, Daniel duodecim prophetae quia isti prophetaverunt Christi adventum; Isaias autem qui quasi evangelista de adventu prophetavit legitur in Adventu.[136]

43. DE OFFICIO TRINITATIS

De festis autem concurrentibus tempore peregrinationis videamus, et primo de officio Trinitatis. Notandum est quoque quod tempore Leonis papae [137] viguit Ariana heresis [138] in tantum quod in concilio generali non sunt inventi catholici nisi tres episcopi, scilicet Hilarius Pictavensis, Dionysius Mediolanum et Eusebius Vercelleum.[139] Unde cum in variis partibus multiplicata esset ista perfidia, tandem suo tempore Alcuinus magister Karoli magni zelo fidei accensus ad confusionem hereticae pravitatis et laudem et gloriam beatae et immortalis Trinitatis historiam de Trinitate composuit,[140] quam beatus Gregorius postea approbavit.[141]

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[z] Joan. 17, 1.

[a] Ps. 18, 6.

[b] 2 Cor. 5, 6.

[134] Beleth, c. 122; Praepos., f. 35a.

[135] Beleth, c. 131.

[136] Beleth, c. 66.

[137] Leo I (440–461).

[138] Condemned at Council of Nice, anno 325.

[139] These three bishops were all present at the Council of Milan in 355, but it is not considered a "concilium generale." Cf. Hefele-Leclerq, *Histoire des Conciles*, I, p. 872.

44. DE NATIVITATE BEATI JOANNIS BAPTISTAE

Sequitur de festo beati Joannis Baptistae ubi primo quaeritur cur de ejus nativitate solemnizetur cum ipse conceptus fuerit in peccatis. Si vero dicatur quod sanctificatus fuit in utero, contra, in evangelio legitur: *Ego a te debeo baptizari et tu venis ad me;* [c] Glossa dicit:[142] Ab originali peccato mundari, ergo beatus Joannes non erat ab originali peccato mundatus, ergo nec in utero sanctificatus. Ad hoc potest dici quod hoc non dixit Joannes ex persona sua sed ex persona ecclesiae;[143] vel non erat mundatus quia nondum plenum mundationis effectum erat consecutus quia nondum amota erat rumphea. Celebratur autem in festo beati Joannis partim de veteri partim de novo quia Joannes fuit terminus legis et evangelii, finis legis et initium evangelii; unde in evangelio lex et prophetae usque ad Joannem. Duabus autem de causis nativitas Joannis celebratur, pro historia et pro mysterio;[144] pro historia quia in evangelio dicitur de eo: *Multi in nativitate ejus guadebunt;* [d] pro mysterio quia Joannes interpretatur gratia Dei; nativitas ergo Joannis significat ortum gratiae vel gloriae in nobis de quorum utroque gaudendum est.

45. DE FESTO PETRI ET PAULI

Sequitur de festo apostolorum Petri et Pauli qui una die sub uno principe, alter per crucem, scilicet Petrus, alter per ensem, scilicet Paulus sunt martyrio coronati; unde versus: Et suo ense necat Paulum . . . cruce Petrum.[145] Fuerunt tamen qui dicerent quod ea die anno revoluto decollatus est Paulus; prior tamen opinio magis approbatur ab ecclesia. Quamvis autem festum mortis duobus sit commune, tamen ecclesia celebrat de beato Paulo forte propter reverentiam Petri qui fuit princeps apostolorum et magister totius ecclesiae. Hoc autem festum apostolorum tria habet, jejunium, solemnitatem et octavas.[146]

46. DE FESTO MAJORIS JACOBI

Sequitur de festo beati Jacobi fratris Joannis Evangelistae cuius corpus requiescit in Compostella. De hoc festo quaeritur cur jejunium non habeat;[147] et ut breviter de aliis nos expediamus, tantum in vigiliis
f. 166 sex / apostolorum jejunamus secundun istos duos versus:

Petrus et Andreas, Paulus cum Simone Judas
ut jejunemus nos admonet atque Matthaeus.

Cur in vigiliis apostolorum aliorum non jejunamus? Ad quod dicimus quod iste Jacobus circa Pascha interfectus est ab Herode gladio sicut legitur in Actibus Apostolorum: *Ibi misit Herodes rex manus ut affligeret quosdam de ecclesia, occidit autem Jacobum fratrem Joannis gladio.*[e] Tempore autem paschali non debet ecclesia jejunare et ita istud festum tempore mortis Jacobi non habet jejunium; translatum est autem tempus hoc ad festum dedicationis ecclesiae ejus de Compostella. De Philippo et Jacobo similiter patet quod non habent jejunium quia tempore paschali ocurrit eorum festum quando filii sponsi non debent jejunare. De Joanne vero Evangelista similiter patet quia ejus festum ita propinquum est Nativitati quod propter gaudium nativitatis ablatum est jejunium. Et hoc idem dicimus de beato vero Thoma; de beato vero Matthia dicimus quod ipse non fuit de primitivis sed substitutus fuit loco Judae et ideo non habet jejunium; de beato vero Bartholomaeo dicimus quod una die est excoriatus et alia die fuit mortuus; unde si haberet jejunium vel istud esset tertio die ante mortem quod non consuevit fieri, vel fieret in die martyrii sui quod similiter ab usu ecclesiae est alienum et ita illud festum non habuit jejunium.[148]

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[c] Matt. 3, 14.
[d] Luc. 1, 14.
[e] Act. 12, 1.

[140] *De fide sanctae et individuae Trinitatis*, Libri III; P. L. 101, 11–58. (Post annum 800.)

[141] Gregory I (590–604)?

[142] *Glossa Ordinaria;* the text is wanting for this section in the Migne edition.

[143] Beleth, c. 136.

[144] Beleth, c. 137.

[145] Ms. et suo ense necat Paulus. par. urbs. lux. dux. cruce Petrum. Hymn is unknown.

[146] Beleth, c. 138.

[147] Ms. habebat.

47. DE FESTO BEATI PETRI AD VINCULA

Sequitur de festo beati Petri ad Vincula ubi primo quaeritur causa institutionis huius festi. Institutum autem est hoc festum occasione cuiusdam miraculi. Cum enim Theosebia [149] uxor Theodosii imperatoris peregre profecta esset Jerosolymam datae sunt ei catenae quibus fuit vinctus sub Herode; quae rediens Romam ostendit ea papae; tunc papa jussit asportari alias catenas quibus ligatus fuit sub Nerone, quae cum se contigissent miraculose conjunctae sunt. Quo viso fecit ecclesiam Theosobia (*sic*) in honore beati Petri ponens ibi illas catenas et institutum est a papa ut die dedicationis illius ecclesiae de vinculis ubique solemnizaret ecclesia; unde ecclesia illa dicitur ecclesia beati Petri ad Vincula usque in hodiernum diem.[150]

48. DE FESTO INVENTIONIS BEATI STEPHANI

De festo autem inventionis beati Stephani dicimus quod transmutatum est. Mors enim Stephani fuit die quo celebratur inventio et inventio ejus die quo celebratur de morte, i.e. in crastino Nativitatis Dominicae, cuius transmutationis supra posuimus rationem.

49. DE FESTO BEATI SIXTI

Sequitur de beato Sixto de quo quaeritur quare ecclesia consuevit conficere de novo vino. Ad quod dicimus quod illa die facta est transfiguratio in monte Thabor. Dominus autem dixerat in coena: *Non bibam amodo ex hoc genimine vitis donec bibam id in regno patris mei.*[f] Transfiguratio autem ad novitatem pertinet quare ea die celebrat ecclesia de novo vino si possit haberi, et ea die ab ecclesia benedicuntur racemi.[151]

50. DE FESTO BEATI LAURENTII

Sequitur de festo beati Laurentii ubi quaeritur cur ante antiphonam quidam versiculi decantantur sicut in festo Pauli. Ad quod dicimus quod isti duo privilegiati fuerunt, Paulus prerogativa praedicationis, iste prerogativis martyrii.[152]

51. DE ASSUMPTIONE

Sequitur de Assumptione beatae Virginis ubi quaeritur utrum assumpta fuerit cum corpore an obierit relicto corpore. Ad quod dicendum quod pie credi potest quod Dominus qui patrem et matrem honorari praecepit,

[f] Matt. 26, 29.

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[148] Beleth, c. 11.

[149] The wife of Theodosius was Eudocia whose daughter, Eudoxia, probably founded the *titulus s. Petri ad Vincula.*

[150] Beleth, c. 141.

[151] Beleth, c. 144.

[152] Beleth, c. 145.

hoc praeceptum in matre sua complevit; tunc enim creditur ad impletum quod de Salomone legitur in libro Regum iii, cap. ii, quod assurexit Salomon matri suae et posuit thronum ejus juxta thronum suum. Tunc enim beata Virgo *in sole posuit tabernaculum suum;*[g] in annuntiatione enim potest dici quod sol erat in virgine, in assumptione vero quod virgo erat in sole. Melius tamen est Deo totum committere et cum Hieronimo pie dubitare quam temere diffinire.[153] In Annuntiatione autem sol conjunctus est lunae non secundum eclipticam[154] lineam sed potius in *lumen ad revelationem gentium et gloriam plebis tuae Israel.*[h] In Assumptione vero luna reversa est ad solem ut ipsius solis nobis temperaret fervorem ne sol per diem nos exureret vel jaculis suae indignationis fulminaret. Ipsa enim assidue pia est advocatrix pro nobis.

Quaeritur autem cur die Assumptionis legitur evangelium de Martha et Maria, illud videlicet: *Intravit Jesus quoddam castellum.*[i] Ad quod dicendum quod ea causa illud legitur evangelium quia ibi agitur de castello quod intravit Jesus; beata autem Virgo fuit castellum nam ipsa est turris fortitudinis nostrae de qua Isaias: *Urbs fortitudinis nostrae Sion, salvator ponetur in ea murus* etc.[j] In hoc enim castello fuit duplex murus; murus enim exterior virginitatis in corpore et murus interior humilitatis in mente. De isto castello legitur in Regum ii: *Sedit David in arce praesidii et aedificavit eam a Mello et intrinsecus;*[k] Mello interpretatur plenitudo quia plenitudinem gratiarum et virtutum eam replevit. Haec est turris Davidica in qua *mille clipei pendent* et *omnis armatura fortium*[l] sicut legitur in Cantico. Haec turris obsidionem non timet quia in ea est panis indeficiens; ipsa enim nobis attulit panem vitae secundum quod legitur in Proverbis: *Facta est quasi navis institoris de longe portans panem suum.*[m] Haec est vera Bethlehem ubi natus est Christus quae domus panis interpretatur; ibi fons perpetuus secundum quod legitur f. 168 in Zachariae: *Erit fons / patens domui David in ablutionem peccatorum et menstruatae.*[n] Haec est illa civitas de qua *dicta sunt gloriosa.*[o] In praedicto autem evangelio agitur de contemplativa et activa vita. Maria vero privilegium obtinuit in utraque. Vis audire contemplationem: *Maria*, dicit evangelista, *conservabat omnia verba haec conferens in corde suo;*[p] post ascensionem enim se multis creditur apostolos docuisse quia plenius aliis novit mysteria incarnationis. De actione autem dicit evangelista: *Tuam ipsius animam pertransibit gladius*[q] et alibi: *Abiit Maria in montana cum festinatione.*[r] Hoc autem festum tria habet ex institutione, jejunium, solemnitatem et octavas.

52. DE MORTE BEATI JOANNIS BAPTISTAE

Sequitur de festo beati Joannis Baptistae quod dicitur festum decollationis. Decollatus autem fuit beatus Joannis circa Pascha et translatus est ejus festum usque ad finem Augusti quando solemnizat ecclesia de collectione ossium ipsius quae erant dispersa in qua die dedicata est ecclesia in honore ipsius, et quod dies illa solemnis habeatur, statutum est a domino papa.[155]

[g] Ps. 18, 6.
[h] Luc. 2, 32.
[i] Luc. 10, 38.
[j] Is. 26, 1.
[k] 2 Reg. 5, 9.
[l] Cant. 4, 4.
[m] Prov. 31, 14.
[n] Zach. 13, 1.
[o] Ps. 86, 3.
[p] Luc. 2, 19.
[q] Luc. 2, 35.
[r] Luc. 1, 39.

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[153] Pseudo-Jerome, *Cogitis me*, 2; P. L. 30, 127. The author is Paschasius Radbertus; cf. T. A. Agius, "On Pseudo-Jerome Epistle ix"; *Journal of Theological Studies*, XXIV (1923), 176–183.

[154] Ms. edypticam.

[155] Beleth, c. 147.

53. DE NATIVITATE BEATAE VIRGINIS

Sequitur de Nativitate beatae Virginis ubi causa institutionis quaeritur. Ad quod dicimus quod per revelationem fuit institutum hoc festum, nam quidam religiosi audierunt angelos canentes et solemnizantes de ejus nativitate, quod cum revelatum esset, papa generale festum instituit per totum mundum.[156] Pertransimus autem hic multa festa, de quibus plene instructa est ecclesia, sicut festum beati Bartholomaei, beati Augustini, beati Matthaei, de Exaltatione Sanctae Crucis.

54. DE FESTO BEATI MICHAELIS

Sequitur autem de festo beati Michaelis ubi quaeritur quare potius de Michaele quam de alio angelo festum in terra celebretur. Ad quod dicimus quod officium Michaelis est deferre animas in sinu Abrahae et etiam praepositus dicitur paradisi et fecit illa magna prodigia in Egypto; nihilominus tamen festum hoc commune est omnium angelorum.[157]

55. DE FESTO BEATI HIERONIMI

Sequitur de festo beati Hieronimi qui Romae fuit cardinalis in ecclesia beati Laurentii, qui cum Romanos argueret de avaritia irrisus est ab eis et cum ibi non proficeret ad partes Hierosolymitanas secessit. Paulam et Eustochium quas[158] in fide nitriverat secum duxit. Loca autem illa in quibus patravit Dominus sacra nostrae redemptionis visitavit. Tandem ibi eremeticam vitam elegit cui leo tamquam mansuetissimum animal ministraverat ducens ad nemus suum asinum et reducens quod miraculum de asino et leone in ejus legenda reperies. Fuit autem tantae tantae industriae in lege Dei quod totam ecclesiam suae sapientiae radiis illustravit. Cui autem Hieronimus non placuerit sciat se in sacris litteris minimum profecisse.

56. DE FESTO BEATI REMIGII

Sequitur de festo beati Remigii qui dictus est papa Gallorum eo quod
f. 169 / primum regem christianorum in Francia baptizavit, cui cum deficeret chrisma missus est caelitus ampullula caelesti unctione plena quae Dei munere semper ad inunctionem regum Franciae exuberat, in quo prae caeteris regibus gaudent reges Franciae tantae privilegio dignitatis. Unde in sequentia beati Remigii habetur:

Dum in aquis rex sacratis
mundaretur a peccatis
res nova miraculi
vas est missum caelitus
dono Sancti Spiriti
per columbam praesuli.

57. DE FESTO OMNIUM SANCTORUM

Sequitur de festo Omnium Sanctorum de quo breviter; sciendum est quod inter omnia festa quae fiunt per anni circulum hoc festum expressius caeteris gaudium angelorum et laetitiam sanctorum jam cum Christo regenerantium et totum statum triumphantis ecclesiae representat. In hoc enim festo recolit ecclesia quod fecit Moyses tabernaculum ad similitudinem ejus quod ostensum est ei in monte. Hoc autem fecit quando *alios dedit apostolos, alios evangelistas, alios prophetas, alios pastores et doctores ad consummationem sanctorum in opus ministerii in aedificationem Corporis Christi.*[s] Huius autem solemnitatis excellentia describitur juxta visionem Ezechielis [t] et in Apocalysi ubi legitur: *Vidi Jerusalem novam descendentem de caelo* etc.,[u] et in Exodo ubi agitur de tabernaculo,[v] et in libro Regum iii ubi agitur de templo,[w] et in Epistola ad Hebraeos ubi legitur: *Sancti per fidem vicerunt regna* etc.;[x] et qui ea die voluerit praedicare, ad praedicta loca recurrat. In officio autem huius festi prima antiphona, primus psalmus, prima lectio, primum responsorium de Trinitate, secundo de beata Virgine, tertio de angelis, quarto de patriarchis <et> prophetis, quinto de apostolis, sexto de martyribus, septimo de confessoribus, octavo de virginibus, nono de sanctis omnibus.[159] Et secundum dignitatem personarum ecclesiae legendae sunt lectiones, prima autem ab episcopo, secunda a decano, tertia ab archidiacono, et sic, deinceps secundum various status ecclesiae.[160]

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[156] Beleth, c. 149.

[157] Beleth, c. 154.

[158] Ms. quos.

58. DE FESTO BEATI MARTINI

Sequitur de festo beati Martini qui dictus est par apostolis non tantum propter suscitationem mortuorum sed quia Spiritus Sanctus in specie ignis descendit super eum. Cum enim offerret sacramenta Dominici Corporis globus igneus apparuit super caput ejus et brachia sua nuda quae pro paupere Christi spoliaverat auro splendissimo decentissime sunt operta.[161]

Ne vero prolixus tractatus aures legentium fastidiat finem hic facimus, a retributore omnium operis praemium exspectantes.

Explicit Summa Magistri Guidonis de Orchellis.

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[s] Eph. 4, 11.
[t] Ezech. 40 et seq.
[u] Apoc. 21, 2.
[v] Ex. 25 et seq.
[w] 3 Reg. 5 et seq.
[x] Heb. 11, 33.

[159] Beleth, c. 158.
[160] Beleth, c. 158.
[161] Beleth, c. 163.

The De Officiis Ministrorum of Saint Ambrose

An Example of the Process of the Christianization of the Latin Language

J. T. MUCKLE, C.S.B.

When Saint Ambrose was chosen by acclamation bishop of Milan, he was the civil governor of Northern Italy and still a catechumen. Before entering the civil service, he had been an advocate. As a youth he had received the usual training given to a young Roman of the upper class in the fourth century, the elements, grammar and rhetoric, and had pursued no special studies with the view of entering the ministry. He writes that he was carried off (*raptus*) from the judgment seat to the priesthood where he found himself in a position in which he began to teach what he had not learned. He goes further in the next sentence and says he began to teach before he began to learn. Probably he stated the case better in the sentence following, wherein he concludes that he must learn and teach at the same time, since he had had no time for study before.[1] But we should not take these statements too literally. It is quite probable, especially in view of the fact that Saint Ambrose was born of Christian parents, that he had received some tuition in Christian doctrine from his childhood,[2] although there is no positive evidence that such was the case.[3]

[1] Ambrose, *De Officiis Ministrorum*, I, 4; P. L. 16, 27C: Ego enim raptus de tribunalibus atque administrationis infulis ad sacerdotium, docere vos coepi quod ipse non didici. Itaque factum est ut prius docere inciperem quam discere. Discendum igitur mihi simul et docendum est, quoniam non vacavit ante discere.

N. B. Henceforth, unless otherwise indicated, all references will be to this work; the Roman numeral will refer to the book, the Arabic numeral to the paragraph, not to the chapter.

[2] In those days when baptism was often delayed even in case of children born to Christian parents, we find instances of men who, though not baptized, had some acquaintance with Christian teaching and practice and considered themselves Catholics. Saint Jerome, who did not receive baptism before he was twenty years of age, boasts that: ab ipsis, ut ita dicam, incunabulis Catholico sumus lacte nutriti. *Ep.* 82, 2; P. L. 22, 737. It is very likely that Saint Basil was not baptized until his return from Athens, when he was about twenty-five years of age (cf. Basil, *De Spiritu Sancto* 29, P. G. 32, 201A): and yet he tells us (*Ep.* 204) that his grandmother had taught him the sayings of Saint Gregory Thaumaturgus and formed him in the doctrines of piety while he was still a child (ἡμᾶς ἔτι νηπίους). P. G. 32, 753A. Saint Gregory Nazianzus, whose father was a bishop, was dedicated as an infant to God. He writes (*Epit.* 115: P. G. 38, 70) that Carterius, his tutor at Caesarea, bound him to the spiritual life. But he was not baptized until several years after his sojourn in Caesarea, likely not before he returned to Nazianzus when he would be about twenty-eight years of age; certainly not before he sailed from Alexandria.

Saint John Chrysostom's father died when the Saint was an infant. His Christian mother devoted her whole time to his upbringing (*De Sacer.*, Chap. 2). He was under the tutelage of Miletius, bishop of Antioch, for three years before he was baptized and ordained lector (Palladius, *Dial.* V, P. G. 47, 18), but he had already studied the Scriptures. (*Ibid.*)

We read in his Confessions that in his nineteenth year Saint Augustine was moved by reading Cicero's *Hortensius* to turn his heart to the Lord; and that although he did not yet know of Saint Paul's warning not to let anyone cheat us by philosophy, yet in his enthusiasm for Cicero's work, it gave him pause (*refrangebat*) that the name of Christ was not there, that name which his heart had tenderly drunk in with his mother's milk and deeply retained: he turned to the Scriptures, but his pride prevented his grasping the inner meaning. This was before he turned to the Manichaeans. Cf. *Conf. III*, Chapters 4, 5, 6. Saint Augustine was thirty-three when baptized.

[3] The references to Simplicianus in the letters of Saint Ambrose (*Ep.* 37, 2: *Veteris affectum amicitiae . . . paternae gratiae amorem;* and *Ep.* 65, 1: *quid est . . . quod a nobis*

One of his chief cares as a bishop was, of course, the formation of his spiritual sons, his clergy, especially of the junior clergy whom he had ordained.[4] Evidently he gave conferences to them [5] and afterwards, perhaps in 391,[6] he gathered these instructions together and published them under the title *De Officiis Ministrorum*. This work then is likely a series of sermons to his clergy, as his *Hexameron* is a series delivered to the faithful. The assumption that the treatise as we have it is a collection of discourses first delivered orally would help to explain the loose sequence and lack of logical order which characterize the work.

Up to his time, there had been no Christian treatise in Latin on conduct as a whole, but only special works on particular virtues, such as those of Tertullian. Lactantius' work *Divinarum Institutionum Libri*, while in part dealing with some moral virtues, is rather an exposition of the Christian views of religion and life in opposition to those of the pagans. The task confronted Saint Ambrose of expressing, in Latin, Christian concepts of conduct based on the Holy Scriptures. Now Cicero, who was much in vogue in Saint Ambrose's day, in his treatise *De Officiis* had expressed in Latin the teachings of Greek moralists, especially those of the Stoics. Saint Ambrose took this work of Cicero and, using its general plan and vocabulary, worked it over and formed it into a treatise of conduct for the clergy. In broad outline, Saint Ambrose's work runs parallel with that of Cicero; in each the main theme of the first book is the *honestum*, that of the second the *utile*, while the third considers the two in conjunction. There is also a close correspondence in the various topics of the respective books and in many instances Saint Ambrose uses the very language of Cicero. He mentions that Cicero had written a work on duties,[7] but does not refer to him either as his inspiration [8] or model. While the passages taken over from Cicero in bulk form but a small part of the work of Saint Ambrose,[9] yet it would seem that he had Cicero's exposition before him while writing.

Since he was addressing his clergy, he leaves out almost all pertaining to warfare [10] and the civil service and substitutes therefor an exhortation to zeal in the Christian ministry. Virtues such as humility [11] and charitableness he treats much more at length; some other virtues, for example sacerdotal chastity, are, of course, not mentioned by Cicero at all.

Cicero professed that he belonged to the New Academy,[12] but he tells us that for

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requiras?), and in the Confessions of Saint Augustine (VIII, 2: *patrem in accipienda gratia*) which with some scholars indicate that Simplicianus was his instructor in boyhood and his guide in his studies after he became bishop, suggest spiritual rather than doctrinal direction, and perhaps indicate only that it was Simplicianus who baptized him.

[4] I, 24: Ego ad vos formandos filios meos . . . quos in Evangelio genui. II, 25: ad filios sermo est . . . quos elegi in ministerium Domini.

[5] This is deduced from the terms of address found in the work; e.g. I, 4: *docere vos; I, 23: ad vos filios meos scribens.* But he sometimes, as Cicero in his *De Officiis*, uses the singular number, e. g. I, 13: *audisti hodie lectum;* I, 15: *audisti hodie legi;* I, 20: *sed tu . . . vestigium tene.* For a discussion of this point see J. R. Palanque, *Saint Ambroise et L'Empire Romain*, Paris: 1933, pp. 452–4, and Theodor Schmidt, *Ambrosius, sein Werk De Officiis Libri III und die Stoa*, Augsburg, 1897, p. 12.

[6] Bardenhewer, *Geschichte der Altkirchlichen Literatur*, III, p. 529: So mögen die Mauriner das Richtige getroffen haben, wenn sie das Werk in das Jahr 391 setzten; Palanque, *op. cit.*, p. 526: seconde moitié de l'année 389; Homes Dudden, *Saint Ambrose, His Life and Times*, p. 695: Some date after the spring of 386.

[7] I, 24: De quibus (officiis) etiamsi quidam philosophiae studentes scripserint, ut Panaetius et filius ejus apud Graecos, Tullius apud Latinos etc.

[8] It was while meditating on the thirty-eighth Psalm that it occurred to Saint Ambrose to write his *De Officiis*. Cf. I, 23.

[9] Most of the treatise consists in the exposition of Scriptural texts to establish his interpretation, and of illustrations of his doctrine by examples taken from the Bible, especially from the Old Testament.

[10] I, 175: nec ad arma iam spectat usus noster.

[11] The Christian virtue of humility was, it is true, unknown to the ancient pagans. But they realized that the exalted should walk the more lowly: *ut recte praecipere videantur qui monent ut quanto superiores simus, tanto nos geramus summissius.* Cic. *De Off.* I, 26, 90. The opposite vice of ὕβρις is exemplified by Herodotus in the case of Xerxes and by the Greek tragedians.

[12] *De Officiis* II, 2, 7.

the first two Books of his work [13] he followed, with some emendations, Panaetius the Stoic. In the third he played his familiar role of an eclectic. In general we may say that the *De Officiis* of Cicero is an exposition of moderate Stoicism, for he tones down some of the rigorous principles of its earlier exponents.

The question arises, why did a bishop in the fourth century, a man who was deeply versed in Sacred Scripture, and one who had already written treatises in which there is a great amount of ascetic doctrine, why did he choose as a basis for conferences to his junior clergy a classical work which expounds the Stoic system of ethics? To answer that question it is necessary to consider Saint Ambrose's attitude towards philosophy in general.

Unlike Saint Jerome and Saint Augustine, Saint Ambrose sees no need for any apology for his use of classical thought. He belongs to much the same school on this point as Saint Justin Martyr.[14] Saint Ambrose holds that whatever truth is found in philosophers is but a reflection of, if not a direct borrowing from, what was already available in the Inspired Word.[15] He seems loath to admit that reason alone ever worked out a rational system of conduct. The very notion of *decorum* he maintains (not too convincingly) is found in the first place in Holy Scripture. *Decorum* was established in our Scriptures in the first place. He quotes the Psalms and Saint Paul to prove his point.[16] Was Panaetius or Aristotle earlier than David? Pythagoras himself following David gave his disciples a law of silence.[17] Plato has been praised for making his "devil's advocate" against Justice ask pardon for his role. Cicero was of the same mind. But Job was the first to discover this.[18] The Stoics borrowed from the Scriptures their doctrines that all the products of the earth were created for the use of man and that men are born for the sake of men.[19] Even the sayings of their poets and other great men had already been expressed before in Holy Scripture.[20] Cicero, Panaetius and even Aristotle got ideas from the Scriptures.[21] These and other passages from this treatise and his other works [22] show clearly that in one sense Saint Ambrose would subscribe to the dictum of Tertullian: *Quod a Deo discitur, totum est.*[23] But one cannot adopt all that they say for they have introduced much that is superfluous and useless.[24] A careful selection has to be made; only that can be chosen which finds corroboration in the Holy Scriptures.[25] And corrections have to be made; for example when treating of justice he tells us that first of all he must exclude what the philosophers have considered its function.[26]

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[13] *Op. cit.* III, 4, 20: quam (disciplinam Stoicorum) his libris sequimur; II, 17, 60: Panaetius quem multum in his libris secutus sum. III, 2, 7: Panaetius . . . quemque nos correctione quadam adhibita potissimum secuti sumus . . . de tertio autem genere deinceps se scripsit dicturum nec exsolvit id quod promiserat. But Cicero claims that in his former works he did not differ much from the Peripatetics. *De Off.* I, 1, 2: nostra . . . non multum a Peripateticis dissidentia quoniam utrique Socratici et Platonici volumus esse.

[14] I *Apol.* 23 P.G. 6, 364A: *ὅτι ὁπόσα λέγομεν μαθόντες παρὰ τοῦ χριστοῦ . . . μόνα ἀληθῆ εστὶ, καὶ πρεσβύτερα πάντων τῶν γεγενημένων συγγραφέων' καὶ οὐχὶ διὰ τὸ ταὐτὰ λέγειν αὐτοις, παραδεχθῆναι ἀξιοῦμεν, ἀλλ' ὅτι τὸ ἀληθὲς λέγομεν.*

[15] Saint Ambrose, *De Bono Mortis*, 10, 45: P. L. 14, 588B: Ea quae in philosophiae libris mirantur translata de nostris; atque utinam non superflua et inutilia miscuissent. That the philosophers were indebted to the Scriptures is a view expressed by several of the Apologists, e.g. Minucius Felix, *Octavius* 20: ut quivis arbitretur aut nunc Christianos philosophos esse, aut philosophos fuisse iam tunc Christianos; Tertullian, *Apol.* 47: Antiquior omnibus veritas. . . . Quis poetarum quis sophistarum qui non omnino de prophetarum fonte potaverit? Inde igitur philosophi sitim ingenii sui rigaverunt. Athenagoras, on the other hand, says that the philosophers by the power of reason gained some notion of the truth that there is one God but that the doctrine of the Scriptures is truer and uniform because written by men under divine inspiration and not by unaided reason. Cf. *Legatio*, 5, 6: P. G. 6, 901–904. Theophilus, *ad Autolycum* (III, 30: P. G. 6, 1168) says that the Greeks had lost the wisdom of God and did not find the truth, and (II, 12), that many writers have essayed the subjects treated in the first chapter of Genesis but were not equal to the task — *σύγκρασιν ἔχει τῇ πλάνῃ*; stronger than Saint Ambrose's words. Aristides, probably the first Apologist, treats only of pagan mythology, which he throws overboard. He does not refer specifically to the philosophers.

[16] I, 30.

[17] I, 31.

[18] I, 43, 44.

[19] I, 132, 133.

[20] III, 2: Nec ergo primus Scipio scivit solus non esse cum solus esset . . . scivit ante eum Moyses. Cicero (*De Off.* III, 1) quotes it as it is known today.

[21] I, 179: Unde hoc vel Tullius, vel etiam Panaetius, aut ipse Aristoteles transtulerint, apertum est satis. Quamquam etiam his duobus antiquior dixerit Job etc.

[22] E. g. *Hex.* VI, 6, 39: P. L. 14, 271D: Nosce te ipsum . . . non Apollinis Pythii sed sancti est. *De Abraham* II, 10, 70; P. L. 14, 515A: Haec, quae simplicibus verbis Sacra Scriptura exprimit, magno quodam cothurno Aristoteles et Peripatetici personant.

Furthermore, the basis of measurement used by the philosophers differs utterly from the Christian standard. Their rule of measurement is the present life. Their whole system is on a temporal plane while that of the Christian is on the eternal, supernatural level. The Christian uses the rule of things future rather than present and only that is truly useful which avails for eternal life, and not simply for the enjoyment of the present.[27] The Christian's outlook is not only temporal but eternal, his conduct is motivated and guided by faith (the rule of things future), the wisdom from God, not by human prudence, the wisdom of the flesh.[28] And it is to lift the whole ethical system from the natural and temporal level of the pagans up to the supernatural plane that he gives as one reason for his writing a treatise even though the philosophers have written on the same subject.[29]

Saint Ambrose, then, finds in the philosophers the expression of some truths which find a basis in the words of Revelation. But selection is necessary, corrections have to be made, and the whole ethical structure has to be placed on a supernatural basis. Further, not only is there found in the Scriptures a simpler and truer statement of principles, but also far better examples of virtuous conduct are presented there than in the profane history of the pagans.

Almost all the references made by Cicero to the great figures of Roman history are discarded, and in their place Saint Ambrose takes instances of persons of virtue found in the Bible, especially in the Old Testament. This is not due so much to the circumstance that Roman history was not a major subject of study in his day as Dudden would imply,[30] nor to the influence of Philo,[31] as to his premise that superior examples of virtue are found among people of the true faith and that the Patriarchs and Prophets were the "Fathers" to the early Church. We must also remember that the treatise was meant primarily for the clergy. The lives of their ancestors should prove a mirror of discipline. They should also show reverence in following them.[32] Who was wiser than holy Jacob?[33] What was lacking to holy Job in virtue?[34] How much greater was the exploit of Eliseus than that of the Greeks?[35]

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[23] *De Anima, Cap.* II, P. L. 2, 691C

[24] Cf. Note 15.

[25] I, 102: Multa praeterea de ratione dicendi dant praecepta saeculares quae nobis praetereunda . . . quoniam quae in Scripturis Sanctis non reperimus, ea quemadmodum usurpare possumus?

[26] I, 131: Sed primum ipsum quod putant philosophi justitiae munus apud nos excluditur. *The* primum munus *was* ut nemini quis noceat *nisi lacessitus iniuria.*

[27] I, 28: Nos autem nihil omnino nisi quod deceat et honestum sit, futurorum magis quam praesentium metimur formula; nihilque utile nisi quod ad vitae illius aeternae prosit gratiam definimus, non quod ad delectationem praesentis.

[28] III, 9: Non sequimur sapientiam carnis . . . sed sapientiam quae ex Deo est.

[29] I, 29: Non superfluum igitur scriptionis nostrae est opus quia Officium diversa aestimamus regula atque illi aestimaverunt.

[30] Homes Dudden, *Saint Ambrose, His Life and Times*, Clarendon Press, 1935, Vol. I, p. 6, n. 4: history . . . appears to have been a subordinate subject. Ambrose in his writings seldom alludes to Roman history.

[31] Raymond Thamin, *Saint Ambroise et La Morale Chrétienne au IV*^{e} *Siècle*, p. 248: Mais la matière du livre, quand elle n'est pas fournie par Cicéron, l'est par cet autre maître de Saint Ambroise que nous venons de nommer, Philon.

[32] I, 116: Sit igitur nobis vita majorum disciplinae speculum . . . imitandi reverentia. III, 138: Nam prope omnia majorum exempla, plurima quoque dicta his tribus inclusa libris tenentur; ut et si sermo nihil deferat gratiae, series tamen vetustatis quodam compendio expressa plurimum instructionis conferat.

[33] I, 120.

[34] I, 194.

[35] III, 87.

What did these men lack (Abraham, Jacob, Joseph, Job, David) in the chief virtues?[36] The deeds of our Moses were superior as well as earlier than those of Fabricius.[37] It is as natural for Saint Ambrose to go to the Old Testament for examples of illustrious virtue as it is for us to go to the Lives of the Saints.

The chief reason then that Saint Ambrose used the treatise of Cicero would seem to be that it provided a general plan and afforded a Latin vocabulary on ethics which could be used to express Christian thought. We must remember that the question of language is always a difficulty in the Christianization of a people. It has to express thought which is not native to it. And in the case of Latin, some new words were coined, some Greek or Hebrew words were transliterated into Latin, but for the most part it was necessary to give new meanings to words already in use.

And Saint Ambrose does not restrict himself to Cicero's *De Officiis*. To a more limited extent, he makes use of other treatises of Cicero; quite likely he also drew considerably from his general knowledge of literature. To such an extent does he use these sources that one could, by making a careful selection and ignoring the context, cull from his work phrases and sentences which taken together would form the framework of the Stoic system of ethics:[38] a happy life depends on virtue;[39] it is certain that virtue is the only (supreme) good;[40] external goods are no help to virtue, and adversity is no hindrance;[41] it is decorous to live according to nature and base to live contrary to nature;[42] we should imitate nature;[43] every duty is either mediate or perfect;[44] the four cardinal virtues embrace all morality.[45]

Stoic language could lend itself to a Christian interpretation. That a life of virtue is the highest life can of course become a Christian maxim, once one interprets virtue as the virtue of charity, of love of God and of our neighbour through God. Of all ancient pagan ethical systems, that of the Stoics approached most closely to the maxims of the Gospel; it almost succeeded in formulating the Golden Rule; it even taught that we must return good for evil.[46]

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[36] I, 115.

[37] III, 91, 92.

[38] The following statements from Saint Ambrose express commonplaces in the writings of the Stoics. Only one or two typical references will be given for each.

[39] II, 1: De Officiis tractavimus quae convenire honestati arbitraremur in qua vitam beatam positam esse nulli dubitaverunt. Cf. Cic. *De Fin.* V, 28: in virtute sola et in ipso honesto cum sit bonum positum . . . in quo uno positum est beatum esse . . . in virtute sola positam esse beatam vitam. Seneca, *De Vita Beata*, 16, 1: in virtute posita est vera felicitas.

[40] II, 18: Certum est solum et summum bonum esse virtutem. Cf. Cic. *De Off.* III, 3, 11: sive honestum solum bonum est ut Stoicis placet, sive quod honestum est id ita summum bonum est quemadmodum Peripateticis vestris videtur. It was a question among the Stoics whether virtue was the summum bonum or its cause (happiness). Cf. Seneca, *De Benef.* IV, 2, 3: utrum virtus summi boni causa sit an ipsa summum bonum.

[41] II, 8: Virtutem . . . quae neque augeatur bonis corporis vel externis neque minuatur adversis. For the Stoics virtue alone is good in the absolute sense. Everything else fell into one of three classes: (a) "secondary" goods (*προηγμένον*) or things desirable, (b) things evil, contrary to nature, (c) things intermediate (*ἀδιάφορον* in the strict sense); *τὰ μεταξὺ τῶν αγαθῶν κὰι τῶν κακῶν*. Stob. II, 142. Cf. Cic. *De Finibus*, III, 15, 50: Itaque cum satis esset constitutum, id solum esse bonum, quod esset honestum, et id malum solum, quod turpe, tum inter haec et illa quae nihil valerent ad beate misereve vivendum, aliquid tamen quod differet esse voluerunt ut essent eorum aestimabilia, alia contra, alia neutrum.

[42] I, 222: Decorum est secundum naturam vivere . . . turpe est quod sit contra naturam. Cic. *De Off.* III, 3, 13: Summum bonum a Stoicis dicitur convenienter naturae vivere; *De Fin.* III, 7, 26: congruenter naturae convenienterque vivere; *De Off.* III, 8, 35: Quod si nihil est tam contra naturam quam turpitudo. Seneca, *De Beata Vita*, 8, 1: Idem est ergo beate vivere et secundum naturam; *Ep.* 122, 5: Omnia vitia contra naturam pugnant.

[43] I, 84: naturam imitemur. Cic. *De Off.* I, 28, 100: quam (naturam) si sequemur ducem *De Amicitia*, 5, 19: quia sequantur . . . naturam optimam bene vivendi ducem. Seneca, *De Beata Vita* 8, 1: Natura enim duce ducendum est.

[44] I, 36.

[45] I, 115 sq.

[46] Seneca, *De Ira* II, 28: aequiores simus delinquentibus; II, 31: Ut omnia inter se membra consentiunt, quia singula servari totius interest, ita homines singulis parcent. Cf. Cic. *De Amicitia*, 21, 80: per se quisque sibi carus est, quod nisi idem in amicitiam transferetur, verus amicus numquam reperietur.

But the ethics of the Stoics for all its noble language was egocentric and materialistic. The Stoics lacked a belief in a transcendent, personal God, and their statements regarding the existence and personal identity of the soul after death were vague, inconsistent and unconvincing. Their whole ethical system was built upon the basis of this life alone and centred around self.[47] Even their doctrine that true virtue profits all was but another expression of the anthropocentric character of their view of life; for the wise man must serve society if he is to realize his nobler self and attain thereby the "happy" life. Christianity, on the other hand, is essentially theocentric and based on the belief that man is destined for a more intimate and higher union with God in eternity; that perfect happiness is not attainable here but will be the reward of those who while on earth live in God's love. Anyone can see that Saint Ambrose uses Stoic phraseology. The question is; did he use it in the Stoic sense or did he adapt it to the Christian ideology?

Cicero begins the second Book of his *De Officiis* with this sentence: *Quem ad modum officia ducerentur ab honestate, Marce fili, atque ab omni genere virtutis, satis explicatum arbitror libro superiore.*[48] Saint Ambrose starts his second Book as follows: *Superiore libro de officiis tractavimus quae convenire honestati arbitraremur in qua vitam beatam positam esse nulli dubitaverunt quam Scriptura appellat vitam aeternam.*[49] It is evident that when Saint Ambrose wrote that sentence he had the above statement of Cicero before him, which he takes over, introducing a variation in the wording but not in the sense. But to Cicero's sentence he adds the Stoic phrase that a blessed life depends upon virtue and then adds the statement that Scripture calls the blessed life eternal life. Just below we read much the same thing: *Certum est solum et summum bonum esse virtutem, eamque abundare solam ad vitae fructum beatae; nec externis aut corporis bonis, sed virtute sola vitam praestari beatam, per quam vita aeterna acquiritur.*[50] Here again Saint Ambrose takes over Stoic language which could summarize the whole Stoic ethic: virtue is the only good, it alone produces the *vita beata;* and then Saint Ambrose adds that through virtue eternal life is gained.

If we take the Stoic phrases in their original sense, then Saint Ambrose tacks on to the Stoic view of life the Christian notion of eternal life, where it does not fit. This is the conclusion of several scholars who have made a study of this treatise. Ewald,[51] whose dissertation has exercised a great influence on later students of Saint Ambrose, says that while Saint Ambrose uses the term happiness in the Scriptural sense and identifies it with eternal life, he apparently transfers the Supreme Good to the next life. But only apparently, he adds, for the other statement contained in the same sentence, that the *vita beata* depends on virtue, is inconsistent with this transcendent notion of the Supreme Good and so apparently there are in Saint Ambrose two distinct orders of ideas. He goes on to say [52] that if the relative *quam* in the last sentence quoted above relates to *vita beata*, then there is a sort of causal relation between the latter and eternal life; but if, as to him appears more likely, *quam* relates to *virtute*, then there is no sequence between the two terms and the *vita aeterna* is quite external to his definition of the highest good as the happiness which accompanies virtue. R. Thamin,[53] in considering the point, holds that Saint Ambrose teaches that the *vita beata* is the future life of happiness, but he also says that when Saint Ambrose comes to treat of the *vita beata* by itself, he goes back to the Stoic notion of it; that there is some ambiguity in the texts, and that the two terms, *vita beata* and *vita aeterna*, are sometimes distinguished, sometimes confused. Schmidt [54] says that the Christian and pagan elements are found side by side, but that some passages are straight Stoicism. Dudden,[55] in his recent work, finds in Saint Ambrose two "independent views of the Highest Good and Blessedness. . . . These views are put forth side by side. We need not here inquire how far they are capable of being harmonized. Ambrose, at any rate, makes no attempt to reconcile them." Visconti [56] says that if *quam* in the second quotation from Ambrose given above relates to *virtute*, then the notion of *vita aeterna* is annexed only externally to the Stoic doctrine that the *vita beata* is obtained through virtue; but that in another passage (II, 3), Ambrose uses the terms *vita beata* and *vita aeterna* in the same sense but considers them from different points of view.

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[47] Seneca, *De Beata Vita*, 8, 3: The wise man should be *mirator tantum sui*.

[48] Cic. *De Off.* II, 1.

[49] II, 1.

[50] II, 18.

[51] Paul Ewald, *Der Einfluss der Stoisch-Ciceronianischen Moral auf die Darstellung der Ethik bei Ambrosius*, Leipzig: 1881, p. 24: Es wird nämlich hier die Glückseligkeit im Anschluss an die Schrift bezeichnet als *vita aeterna* und damit scheinbar das höchste Gut in's Jenseits verlegt. Vielleicht freilich nur scheinbar! Denn das andere, das die *vita beata in honestate posita* sein soll, wie in demselben Satz zu lesen, will mit dieser Transcendenz nicht recht stimmen, und es scheint, als liefern gleich hier in den ersten Worten zwei verschiedene Gedankenreihen zusammen. Cf. p. 28: Und so ist denn wohl klar, dass Ambrosius trotz der *vita aeterna* und trotz aller jener zuerst citierten, aus seinem Christlichen Bewusstsein geborenen Aeusserungen von seiner antiken Vorlage sich schon hier abhändig gemacht hat. Er verliert den Gedanken der Transcendenz des höchsten Gutes bald ganz aus dem Auge, bald schwächt er ihn wenigstens in seiner Bedeutung für die Christliche Ethik ab. Keinesfalls findet er rechten Platz dafür innerhalb seiner Darstellung der Pflichtenlehre.

[52] *Op. cit.*, p. 26.

But is there not another interpretation than these which assume that Saint Ambrose wrote as a Stoic wearing a mitre? While he made no claim to being a philosopher, and although he is not a great theologian when compared to Saint Augustine, yet Saint Ambrose was a man of education and endowed with a keen and practical mind. He had been a bishop some fifteen years when he published this work. That he had been a student during these years he himself tells us, and his statement is confirmed by the learning and wide reading evident in his other works. In the *De Officiis* he is teaching his young clergy the priestly way of life. Now does it seem reasonable that he would teach them Stoic doctrine and tack on texts and examples from Scripture in a disjointed way; that he would be so stupid as to try to patch together the Stoic and the Christian outlook on life with no unity or sequence of thought? Does it not seem more reasonable to suppose that Saint Ambrose was using Stoic terms in a Christian sense; that to understand his treatise, one has to determine not what Cicero or Seneca meant by the terms *vita beata*, *virtus*, but what Saint Ambrose meant?

Let us examine the *De Officiis* of Saint Ambrose and see whether we can determine what he meant by these and other Stoic phrases. We shall have to garner his meaning from sentences found here and there. Like Cicero's *De Officiis*, the model he was using, Saint Ambrose's work is not a treatise logically arranged in ordered sequence. But it is quite possible to gather his meaning when he uses these terms, and once that is done then a reasonable interpretation can be placed on the treatise as a whole.

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[53] R. Thamin, *Saint Ambroise et La Morale Chrétienne*, p. 220: La vie heureuse impossible à réaliser ici-bas, c'est la vie future, c'est le bonheur, . . . mais le bonheur mérité par la vertu et par l'oubli momentané qu'on a fait de lui. . . . Mais quand il traite de la vie heureuse, c'est autre chose qu'il entend et . . . il s'écarte moins des solutions païennes. . . . La vie heureuse est donnée comme un moyen pour arriver à la vie éternelle, mais ce mot lui-même de vie éternelle ne veut pas toujours dire ce que nous serions naturellement portés à croire. Du moins y a-t-il quelque ambiguité dans les textes. Vie éternelle et vie heureuse sont tantôt distinctes, tantôt confondues. *A few lines above he says:* L'expression de vie heureuse qu'il emploie souvent nous reporte en arrière, en plein stoïcisme.

[54] *Op. cit.*, p. 26: . . . christliche und heidnische Elemente unmittelbar neben einander hergehen. Nichts destoweniger lassen sich einige Stellen mit echt stoischem Gepräge finden.

[55] *Op. cit.*, Vol. II, p. 519.

[56] L. Visconti, "*Il primo trattato di filosofia morale cristiana*," in *Atti della R. Accademia d' archeologia, lettere e belle arti*, Naples, XXV, *part. sec.* 1908, p. 54: perchè se il *quam* si riferisce alla virtù allora s' indica che per la virtù si concede la *vita beata* come premio in questo mondo e per la virtù si ottiene la *vita eterna* che è speranza di cose future. In tale interpretazione il concetto della *vita eterna* è annesso solo esteriormente al concetto stoico, che la beatitudine si ottenga per mezzo della virtù. Altre volte la *vita beata* e la *vita eterna* sono prese in un significato identico, ma considerato da diversi punti di vista.

(*a*) *Vita beata* and *Vita aeterna*

THE PHRASE *vita beata* is a Stoic phrase originally. It meant for the Stoics of the Roman period, theoretically at any rate, the state of ἀπάθεια, of serene quiet, of independence and tranquillity of mind, of self-sufficiency attained by living according to nature, that is, a life of rational self-control, free from passion.[57] For the Stoics it is rather negative than positive. But while the phrase *vita beata* is Stoic, both the words *vita* and *beatus* were by Saint Ambrose's time common Christian terms, with a meaning proper to Christianity and familiar to all the faithful. The *beatus vir* of the Psalms and the Sapiential Books, and the *beati* of the Sermon on the Mount, occur to one at once.[58] The Christians were familiar with the word *beatus* [59] apart from Stoicism altogether. It does not mean happy, a word which carries with it an implication of personal enjoyment. Our Lord says: *beati qui nunc fletis, quia ridebitis.*[60] Neither does it denote the self-composure, self-satisfaction, self-centered complaisance of the Stoics. In the Old Testament, it means well-off in the sense that he who is *beatus* is in God's favour and love, blessed by God and will eventually prevail.[61] In the New Testament the word is usually employed more in the sense that the man who endures this life with its trials is blessed because he is meriting heaven: Beatus vir qui suffert tentationem, quoniam cum probatus fuerit, accipiet coronam vitae, quam repromisit Deus diligentibus se.[62] The same meaning is seen in some of the beatitudes: e.g. Beati mundo corde quoniam ipsi Deum videbunt: Beati estis . . . quoniam merces copiosa est in caelis.[63] For Saint Ambrose, the man is *beatus* who keeps sin out of his life, whose life is holy, who possesses abundantly the grace of God: nihilque tam beatum nisi quod a peccato alienum sit, plenum innocentiae, repletum gratiae Dei. Scriptum est enim: Beatus vir qui non abiit in consilio impiorum, et in via peccatorum non stetit, et in cathedra pestilentiae non sedit; sed in lege Domini fuit, voluntas ejus. Et alibi: Beati immaculati in via, qui ambulant in lege Domini.[64] The man who is *beatus* is without sin, innocent, that is, his will is on the law of God, pure of heart, filled with the grace of God, such is Saint Ambrose's interpretation in his own words — a far cry from Stoicism.

In Saint Ambrose's day, *beatus* was also used as an equivalent of *sanctus.*[65] In the inscriptions composed by Pope Damasus, the martyrs are called *beati* and *beatissimi;*[66] the title of the Mother of God is to this day usually *beata Maria, beata Virgo*, not *sancta Maria, sancta Virgo.*[67]

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[57] Cf. Cic. *Tusc.* IV, 28, 60: ipsas perturbationes per se esse vitiosas. Epic. *Enchir.* 12: ἐπίλεγε ὅτι τοσούτου πωλεῖται ἀπάθεια, τοσούτου ἀταραξία.

[58] The phrases *beatus vir*, *beatus homo*, or simply *beatus*, occur altogether about fifty times in the Vulgate; and the plural form is found nearly as often. Of course Saint Ambrose did not use the Vulgate, but the word *beatus* was employed in the old Latin version to translate the Greek, μακάριος.

[59] *Beatitudo* on the contrary is a word coined by Cicero and used by Saint Jerome only three or four times to translate the Greek word, μακαρισμός.

[60] Luke, 6, 21.

[61] Cf. Ps. I et passim.

[62] James, 1, 12.

[63] Matt. 5, 8, 11–12.

[64] II, 8.

[65] Cf. H. Delehaye, *Sanctus, Essai sur le Culte des Saints dans L'antiquité*, Brussels, 1927, pp. 64 sq.

[66] The term *beatissimus* was applied during the fourth century also to the Emperors, while living, in the sense of august. We find it used as a term of address even of Julian: *Nobillissimus ac beatissimus Caesar*. Delehaye, *ibid.*

[67] Since the legislation of Benedict XIV, the appellation *beatus* is applied to those of the faithful departed whose process of Canonization has passed through the first stage; *beatus, venerabilis, sanctus* is the gradation today. But even in some of the recent Offices inserted in the Breviary, the term *beatus* is used instead of *sanctus*.

The phrase *vita aeterna* is specifically Christian. In the New Testament, it often signifies the life of glory in heaven: heirs according to hope of life everlasting;[68] unto the hope of life everlasting which God . . . hath promised;[69] heirs of life everlasting;[70] what good shall I do that I may have life everlasting?;[71] the just shall go into life everlasting.[72] *Vita* alone is sometimes used in this sense: in the book of life;[73] if thou wilt enter into life;[74] unto the resurrection of life.[75] On the other hand both terms, *vita* and *vita aeterna*, are used in a sense which refers also to the life of grace here: I have come that they may have life;[76] And you will not come to me that you may have life;[77] Except you eat the flesh of the Son of Man . . . you shall not have life in you;[78] He who believeth Him that sent me hath life everlasting;[79] and I give them life everlasting;[80] God hath given to us eternal life.[81] He that hath the Son hath life.[82] Eternal life in this sense means the life of grace viewed as the foretaste and meritorious cause of the life of glory; or, as Saint Thomas puts it, the life of grace is the beginning of eternal life.[83]

The audience which Saint Ambrose was addressing was familiar with the term *vita aeterna*, and had a definite notion from the Scriptures of the terms *vita* and *beatus* each taken by itself. Saint Ambrose took from the pagan morality the term *vita beata* and gave to the phrase a truly Christian meaning drawn from the two Christian concepts *vita* and *beatus*.

There are three passages in which Saint Ambrose especially associates the *vita beata* and the *vita aeterna*. In two of them he says distinctly that Scripture calls the blessed life eternal life. *Vitam beatam . . . quam Scriptura appellat vitam aeternam;*[84] *unde expressius Scriptura vitam aeternam appellavit eam quae sit beata.*[85] Eternal life here means not only the glory of heaven, but also the life of grace here which is its meritorious cause. "Divine Scripture puts eternal life in the knowledge of God and the fruit of a good life; the Gospel bears witness to each of these assertions; for it was of knowledge that the Lord Jesus spoke as follows: This is eternal life that they may know thee the only true God and Jesus Christ Whom thou has sent. And of works He answered as follows: Every one that shall have left home or brethren . . . shall possess life everlasting."[86] He then goes on to say[87] that though this truth is found in the Gospels, it is also found in the mouth of David, who was long before the philosophers; he continues, quoting several texts from the Psalms where the word *beatus* is used: Blessed is the man whom thou shalt instruct, O Lord; Blessed is the man who feareth the Lord, he will rejoice greatly in His commandments; he interprets the fear of the Lord to mean instructed in the law (knowledge) and says the prophet adds regarding knowledge: Glory and wealth shall be in his house and his justice remaineth forever and ever. "And for works there is added in the same Psalm that the reward of eternal life goes to the just man: Blessed is the man that showeth mercy and lendeth: . . . he shall not be moved forever; the just shall be in everlasting remembrance. And below: he hath distributed, he hath given to the poor; his justice remaineth forever and ever."[88]

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[68] Tit. 3, 7.

[69] Tit. 1, 2.

[70] I Pet. 3, 22.

[71] Matt. 19, 16.

[72] Matt. 25, 46.

[73] Apoc. 20, 15.

[74] Matt. 19, 17.

[75] John 5, 29, et passim.

[76] John 10, 10.

[77] John 5, 40.

[78] John 6, 54.

[79] John 5, 24.

[80] John 10, 28.

[81] I John 5, 11.

[82] I John 5, 12.

[83] II^{a} II^{ae}, q. 24, a. 3, ad 2: gratia nihil aliud est quam quaedam inchoatio gloriae in nobis: I^{a} II^{ae}, q. 69. a. 2, c. spes futurae beatitudinis potest esse in nobis propter duo; primo quidem propter aliquam praeparationem vel dispositionem ad futuram beatitudinem, quod est per modum meriti; alio modo per quamdam inchoationem imperfectam futurae beatitudinis in viris sanctis etiam in hac vita. . . ; ea vero quae ponuntur tanquam praemia, possunt esse vel ipsa beatitudo perfecta, et sic pertinent ad futuram vitam, vel aliqua inchoatio beatitudinis, sicut est in viris sanctis. De Veritate, q. 14, a. 2, c. Vita autem aeterna consistit in plena Dei cognitione. . . . Unde oportet hujusmodi cognitionis supernaturalis aliquam inchoationem in nobis fieri; et haec est per fidem. . . .

[84] II, 1.

[85] II, 3.

[86] II, 5.

[87] II, 6.

To prove that the doctrine of Eternal Life is older than the teaching of the Gospels, he chooses texts from the Psalter, each of which begins with the word *beatus* and, except the first, ends with the notion of eternity. Now the phrases, "rejoice greatly," "shall not be moved forever," "everlasting remembrance," "his justice remaineth forever," indicate a condition which was to apply in this life and be continued into the next. In fact, in the mind of the Jews, the temporal aspect was the more clearly perceived and felt. And Saint Ambrose, in using these texts to prove the antiquity of the notion of Eternal Life in the Scriptures, bases his argument on the identity of the terms above mentioned and of Eternal Life. There is no question that the texts quoted refer to the present life as well as to the future; therefore he understood eternal life in the same sense, as beginning here. And further, the term *beatus* here signifies to Saint Ambrose the same as in the New Testament; namely, that he is *beatus* whose life is such here that it will continue and culminate in the life of glory in heaven.

This interpretation of his doctrine is confirmed by the statement immediately following: Faith then holds eternal life because it is a good foundation; and good works hold it because the just man is being proved both by word and deed.[89] He says that faith and good works have, hold (*habet*), not will have or will be rewarded with, eternal life. Eternal life is a present possession and not simply a future reward.

A little later he says that the *vita beata* is the fruit of the present, while *vita aeterna* is the hope of the future.[90] He makes here only a logical distinction between the *vita beata* and the *vita aeterna;* the former is a life of faith and works viewed as blessed by God, and the spiritual consolation which results from a realization of this; the latter, the same life viewed as the basis of our hope, the meritorious cause of a future life with God.[91]

The Scriptures then to Saint Ambrose call the blessed life, the life of grace, Eternal Life in the sense that it is the beginning and cause of the everlasting life of glory; it is the union with God by love here which culminates in the beatific vision in the next life. The whole span of the life of the soul from baptism (faith) [92] to the unending life with God in heaven is the Eternal Life. As Saint Ambrose puts it, the man who seeks his reward from God *has* Eternal Life.[93] Once the thief on the Cross turned to Christ, he received the promise of paradise, he was in God's love and thereby began his Eternal Life, and it is this life which the Scripture calls blessed: it is not left to the estimation of men as to whether it is riches or honour or freedom from pain, but it is decreed by God in the economy of salvation.

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[88] II, 6.

[89] II, 7: Habet ergo vitam aeternam fides quia fundamentum est bonum: habent et bona facta quia vir justus et dictis et rebus probatur.

[90] II, 18: Vita enim beata fructus praesentium; vita autem aeterna spes futurorum est.

[91] The statement, *vita aeterna spes futurorum est*, might, I admit, be translated by some; eternal life is our future hope, but this rendering would not be a true and exact translation of the words as they stand and would be contrary to the meaning Saint Ambrose constantly gives to the phrase, *vita aeterna; futurorum* is an objective genitive, not a genitive of description.

[92] In the present Roman Ritual we find in the form of the administration of Baptism the following: Fides, quid *praestat* (not *praestabit*)? and the person to be baptized answers: *vitam aeternam.*

[93] II, 3: Qui ab hominibus quaerit, habet mercedem suam; qui autem a Deo, habet vitam aeternam; quam praestare non potest nisi auctor aeternitatis, sicut illud est: Amen dico tibi, hodie mecum eris in paradiso. Unde expressius Scriptura vitam aeternam appellavit eam quae sit beata; ut non hominum opinionibus aestimandum relinqueretur, sed divino judicio committeretur.

In the third passage: *virtute sola vitam praestari beatam per quam vita aeterna acquiritur, quam* may be considered as referring to *virtute* or to *vitam beatam*. With Ewald,[94] I consider it more in conformity with the general tenor of the treatise to regard it as relating to *virtute*. But it is not clear from this text whether Saint Ambrose derives eternal life directly from virtue, thus making the blessed life and eternal life both result from it, or makes the blessed life the middle term between the other two. It is a question of grammatical interpretation; but it is not the important point. For Saint Ambrose there is only a logical distinction between the Blessed Life and the Eternal Life viewed as the hope and cause of heaven. It is the meaning of the phrase Eternal Life in the sense of a life of faith and good works on earth which gives the key to his thought and establishes the sequence. He raises the Stoic phrase *vita beata* to the Christian level where it can meet and be joined with the Scriptural term *vita aeterna*.

His other determinations of the term *beatum* are consistent with this interpretation. When he says that innocence and knowledge make a man blessed,[95] he simply means a life of faith and virtue. Innocence with him, as in the Scriptures and Christian theology, is not a negative [96] but a positive term; it denotes virtue. All will recall the frequent recurrence of the phrase in the Psalms: *beatus vir qui non*, etc. In the preceding paragraph he says that knowledge is not enough; virtue must accompany it; that to be *beatus* in the Scriptural sense is to be free from sin, full of innocence and abounding in the grace of God. He had already shown [97] that by knowledge is meant faith. He summarizes his doctrine by the statement that innocence (virtue) and knowledge (faith) make a man blessed. He also states that tranquillity of conscience and the peace of innocence make life blessed.[98] For Saint Ambrose, the *tranquillitas animi* is linked with temperance.[99] It does not denote quietism but activity. It is possessed by those whom Godliness exercises unto justice, continence, meekness, who rooted and grounded in grace, fight the fight of faith, who become not entangled in the affairs of the world, for they are fighting for God, who are satisfied with the products of their little field if they have one. Cicero speaks of the *tranquillitas animi atque securitas* of statesmen who should not be *anxii*,[100] but free from all passion (*perturbatio*); *ut tranquillitas animi et securitas adsit*.[101] For Saint Ambrose [102] this means to please God so that Christ's power may show forth itself in us; to be true to our captain; to make our members instruments of justice . . . weapons for God. He also implies the blessed life consists in deep wisdom, a soothing conscience and sublime virtue.[103] Wisdom, as we shall see, he identifies with prudence which consists in striving to know God, while the soothing conscience is simply the testimony rendered not by others but by the conviction possessed by the man with a clear conscience that God will protect him.[104] Saint Ambrose, employing a phrase of Saint Paul, calls conscience the law of the mind,[105] the true and uncorrupted judge, and using phrases from the Book of Job,[106] he contrasts the death of the just man who dies in the abundance of his own will, his soul as it were filled with marrow, with the death of the sinner, who takes with him nothing but the price of his own crimes,[107] whose repose is in hell.[108] While Saint Ambrose emphasizes the role of conscience in the *vita beata*, it is for him not the norm by which a man determines his own uprightness without relation to God [109] but the true law of the mind which reaches to heaven or to hell. So too, suffering is not a blessed thing in itself but to be victorious over it is a blessed thing;[110] Stoic language it is true, but for Saint Ambrose transformed in the examples of Jacob, Joseph and David, who all felt their own weakness but stoutly prevailed over it by their faith and love of virtue.[111] "Pain does not lessen the pleasure of virtue, and there is no loss of blessedness to virtue through pain, and no increase through bodily pleasures." The Apostle says well: the things that were gain to me, the same I have counted loss for Christ.[112] Here Saint Ambrose remains close to the Stoic notion of *beatitudo*. For while the words of the Apostle cover the case of bodily pleasure, they do not reconcile pain and the "pleasure" of virtue. A little later,[113] in words suggested by Cicero, he adds that some grief in a blessed life is like the bitterness of the tares in the sheaves which is overcome by the sweet scent of the grain. In this attempted reconciliation of grief with the *vita beata*, Saint Ambrose does not succeed in raising the endurance of pain from the Stoic plane up to the level of the Christian doctrine of suffering, based on membership in the Mystical Body of Christ.

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[94] *Op. cit.*, p. 26, n. 1: relative to referring *quam* to *vitam beatam*, he says: Uebrigens ist sie nach dem ganzen Context von vornherein unwahrscheinlich.

[95] II, 9: Innocentia igitur et scientia beatum faciunt.

[96] With the Stoics it meant not to injure, or to be injured by, another. Cic. *Tusc.* III, 8, 16: est innocentia affectio . . . quae noceat nemini. Cf. Stob. Ecl. II, 204.

[97] II, 5.

[98] II, 1: Tantus enim splendor honestatis est ut vitam beatam efficiant tranquillitas conscientiae et securitas innocentiae.

[99] I, 184: Exerceat ergo te pietas ad justitiam, continentiam, mansuetudinem ut . . . confirmatus et radicatus in gratia bonum fidei subeas certamen; non te implices negotiis saecularibus, quoniam Deo militas . . . agelluli sui contentus fructibus, si habet. . . . Ea est enim tranquillitas animi et temperantia, quae neque studio quaerendi afficitur, neque egestatis metu angitur.

[100] Cicero, *De Officiis* I, 21, 72: tranquillitas animi atque securitas, siquidem nec anxii futuri sunt et cum gravitate constantiaque victuri.

[101] *De Off.* I, 20, 69.

[102] I, 185.

[103] II, 19: altitudine sapientiae, suavitate conscientiae, virtutis sublimitate.

[104] I, 6: Sanctus Domini ait: Dixi: custodiam vias meas ut non delinquam in lingua mea. Sciebat enim et legerat *divinae* esse *protectionis* ut

(*b*) *Virtus* and *Natura*

SAINT AMBROSE considers virtue subjectively as a human act and objectively in its turn, in its relation to God. In dealing with virtue as a human act he takes over the language of the Stoics, as Saint Thomas does of Aristotle, but for his interpretation he goes to the thought of the Scriptures. According to the Stoics the highest life is a virtuous life, which is a life in conformity to nature; conformity to nature means harmony with the law of the universe. The Stoics held that all things are material, but that through the universe there runs a law or reason. To live in accordance with this universal reason (itself material) is to live virtuously and to attain the highest good. Saint Ambrose appeals to nature as a norm or law several times. But

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homo a linguae suae flagello absconderetur, et a conscientiae suae testimonio. Verberamur enim tacito cogitationis nostrae opprobrio et judicio conscientiae. II, 2: Beata plane quae non alienis aestimatur judiciis, sed domesticis percipitur sensibus tanquam sui judex. I, 44: non secundum forensem abundantiam aestimandam beatitudinem singulorum; sed secundum interiorem conscientiam. I, 45: Ille suo affectu beatus, hic miser; ille suo judicio absolutus, hic reus . . . vita facinorosi, ut somnium. Cf. 2 Cor. 1, 12: Nam gloria nostra haec est, testimonium conscientiae nostrae.

[105] Rom. 7, 23.

[106] Job 21, 17, 22, 24.

[107] I, 44.

[108] I, 45.

[109] Cf. Cic. De Natura Deorum III, 35: et virtutis et vitiorum sine ulla divina ratione grave ipsius conscientiae pondus.

[110] II, 19: Non enim in passione esse, sed victorem esse passionis beatum est.

[111] II, 20.

[112] II, 12.

[113] II, 21: Esto tamen fuisse in illis aliquid acerbitatis quem virtus animi non abscondit dolorem. Neque enim profundum mare negaverim quia vadosa sunt litora; neque coelum lucidum quia interdum obtexitur nubibus; neque terram fecundam, quia aliquibus locis jejuna glarea est; aut laetas segetes quia intermistam solent habere sterilem avenam. Similiter puta beatae messem conscientiae interpellari aliquo acerbo doloris. Nonne totius manipulis vitae beatae, si quid forte accidit adversi atque amaritudinis, tanquam sterilis avena absconditur, aut tanquam lolii amaritudo frumenti suavitate obducitur? Cf. Cicero, *De Finibus*, V, 30, 91: Ne seges quidem igitur spicis uberibus et crebris, si avenam uspiam videris: nec mercatura quaestuosa, si in maximis lucris paulum aliquid damni contraxerit. An hoc usquequaque aliter in vita, et non ex maxima parte de tota judicabis?

he always interprets the term in a Scriptural sense.[114] For him, God is the author of nature and He made all things good. What is according to nature then is simply according to God's will. A virtuous life is in accordance with nature, for God made all things good, and what is opposed to it is shameful.[115] The law of nature then is the will of God. In one passage he identifies the two: Ergo secundum Dei voluntatem vel naturae copulam invicem nobis esse auxilio debemus.[116] The bond of nature demands mutual assistance on the part of men for God has so ordained things: nature has poured forth all things for all for common use; for God ordered all things to be produced that there might be sustenance in common for all.[117] For man to act according to nature is, with Saint Ambrose, for him to live as God made him, a rational being, placed on earth amongst his fellowmen. He gives the Scriptural meaning to the term nature sometimes using the phrase the law of nature.[118] It is seemly to live in accordance with nature and whatever is contrary to nature is harmful,[119] and he immediately quotes Saint Paul: Does not even nature itself teach you that a man indeed if he nourish his hair, it is a shame unto him?[120] "Let us imitate nature,"[121] he says, but he is protesting against a man's trying to assume the voice of a woman. We should have no ideas contrary to nature, base and unseemly, for man excels the brute by reason whereby he considers that the author of his being should be searched out.[122] The man who injures another violates nature and brings on himself remorse of conscience; *out of the mouth of fools, there is a rod for wrong doing*.[123] It is the law of nature which binds us to show to all kindly feeling so that we should help one another as parts of the body; if the whole body is injured in one member, so also is the whole community of the human race; the nature of mankind is injured as also is the society of the Church which rises into one united body bound together in the unity of faith and love. Christ, the Lord, also will grieve that the price of His Blood was paid in vain.[124] The Stoic doctrine that virtue profits the whole human race by the bond of affinity rises into the union of the members of the Church by faith and love, and of that of all men for whom Christ died.

When Saint Ambrose treats virtue objectively, in its relation to God, his language as well as his thought is thoroughly Christian. It is the interior life with God which counts.[125] Virtue is active.[126] Works without faith is a building raised on sand.[127]

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[114] The question whether Saint Paul used Stoic phraseology did not occur to Saint Ambrose.

[115] III, 28: Nam si honestas secundum naturam, omnia enim fecit Deus bona valde, turpitudo utique contraria est.

[116] I, 135.

[117] I, 132: Natura enim omnia omnibus in commune profudit. Sic enim Deus generari jussit omnia ut pastus omnibus communis esset.

[118] E. g. III, 28: Non potest ergo honestati convenire et turpitudini, cum haec inter se discreta naturae lege sint. Cf. III, 19 et passim.

[119] I, 222: Decorum est secundum naturam vivere, secundum naturam degere et turpe est quod sit contra naturam. Cf. Cicero, *De Off.* I, 27: Quod ita naturae consentaneum sit. But by the term, nature, Cicero here means reason; in quo natura ejus a reliquis animantibus differat. *Ibid.*

[120] I. Cor. 11, 13–14.

[121] I, 84: Naturam imitemur.

[122] I, 124.

[123] III, 24; Prov. 14, 3.

[124] III, 19: Haec utique lex naturae est, quae nos ad omnem astringit humanitatem ut alter alteri tanquam unius partes corporis invicem deferamus. . . . Jam si in uno membro totum corpus violatur, utique in uno homine communio totius humanitatis solvitur; violatur natura generis humani, et sanctae Ecclesiae congregatio quae in unum connexum corpus atque compactum unitate fidei et caritatis assurgit; Christus quoque Dominus, qui pro universis mortuus est, mercedem sanguinis sui evacuatam dolebit.

[125] II, 8: Nihilque tam beatum nisi quod a peccato alienum sit, plenum innocentiae, repletum gratiae Dei. I, 126: Quid enim tam plenum officii quam deferre auctori studium atque reverentiam. III, 36: Vitam suam Christum indutus abscondat.

[126] I, 125: Ut ad illud beate honesteque vivendum pervenire possint atque operibus approprinquare; non enim qui dixerit mihi etc. . . . Studia scientiae sine factis, haud scio an etiam involvant magis. II, 7: Gravius est scire quid facias, nec fecisse quod faciendum cognoveris.

[127] II, 7: Contra quoque strenuum esse in operibus, affectu infidum, ita est ac si vitioso

Faith is the foundation of justice.[128] Or, as he puts it in another way: the philosophers based virtue on the bond of society but there is a higher order: justice is a virtue resting on the foundation of wisdom which is Christ.[129] The supernatural and theocentric character of virtue will be treated more at length in discussing the cardinal virtues.

(*c*) *Officium perfectum* and *officium medium*

SAINT AMBROSE takes over the Stoic distinction between *officium medium* and *officium perfectum* and interprets it in terms of the Gospel. With Cicero, *officium perfectum* is the absolute right, performed only by wise men of whom there are few; *officium medium* is duty for the performance of which an adequate or praiseworthy reason can be given.[130] Perfect duty, according to the Stoics, has to do with the absolute good, while intermediate duty concerns what is good and desirable only in relation to the absolute good. Peculiar circumstances determine the morality of the intermediate duty: examples of the latter would be to converse, to walk about. Saint Ambrose says this distinction can be confirmed by the authority of the Scriptures.[131] But in his interpretation of the terms, he departs from the meaning attached to them by the Stoics and makes the perfect duty embrace the higher Christian practice, and the intermediate includes what requires less sacrifice. To say that Saint Ambrose did not understand the Stoic meaning is, it seems to me, to miss the point.[132] He is simply again giving a Christian interpretation to Stoic language. He quotes the answer of Our Lord to the young man: Thou shalt not kill, commit adultery, etc., and says these are ordinary duties to which something is lacking.[133] To sell our goods and to give to the poor, to love our enemies, to pray for those who falsely accuse and persecute us, to bless those who curse us, these comprise the *officium perfectum* by which all things are put right which could have any failing in them.[134] He combines the counsel of poverty with the precepts of the higher law of love, enunciated by Our Lord in the Sermon on the Mount to make up the *officium perfectum*. Here again Saint Ambrose uses the Stoic term but by his interpretation he departs from the Stoic meaning.[135]

Cicero goes on to say that the perfect duty is possible only to the "wise man."[136] All others have only a semblance of it. Not even the Decii nor the Scipios were "wise men," no not even the seven wise men of antiquity could qualify, while the

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fundamento pulchra culminum velis elevare fastigia; quo plus exstruxeris, plus corruit, quia sine munimento fidei bona opera non possunt manere . . . et arenosum solum cito cedit. Ibi ergo plenitudo praemii, ubi virtutum perfectio. . . .

[128] I, 142: Fundamentum ergo est justitiae fides.

[129] I, 251: Haec virtutum genera principalia constituerunt etiam qui foris sunt; sed communitatis superiorem ordinem quam sapientiae judicaverunt; cum sapientia fundamentum sit, justitia opus sit, quod manere non potest, nisi fundamentum habeat. Fundamentum autem Christus est.

[130] Cicero, *De Off.* I, 3, 8: Perfectum officium rectum, opinor, vocemus, quod Graeci κατόρθωμα; hoc autem commune officium καθῆκον vocant . . . rectum quod sit, id officium perfectum: medium autem officium . . . quod cur factum sit, ratio probabilis reddi possit.

[131] I, 36: Officium autem omne aut medium aut perfectum est quod aeque Scripturarum auctoritate probare possumus.

[132] Dudden, *op. cit.*, II, p. 521, repeats Ewald when he says: The distinction is adopted by Ambrose, though he does not appear to have understood it correctly.

[133] I, 36: Haec sunt media officia quibus aliquid deest. The young man had asked; quid adhuc mihi deest? (Matt. 19, 20.)

[134] I, 37: diligendos amicos, et orandum dicit pro calumniantibus et persequentibus nos, et benedicere maledicentes. . . . Hoc est igitur perfectum officium quo corriguntur omnia quae aliquos potuerunt lapsus habere.

[135] In his work *De Viduis*, 12, 72–74, P. L. 16, 269–270, Saint Ambrose makes the distinction between precept and counsel, taking up the language of Saint Paul. He does not bring in there the terms, *officium perfectum* and *officium medium*, but says a precept is given to subjects, counsel to friends; a precept is a law, a counsel is a favour (*gratia*).

[136] Cicero, *De Officiis* III, 3, 14–15.

officia media are a sort of second grade [137] moral goodness shared by mankind. Saint Ambrose admits that the perfect duty is performed by the few and the ordinary by the many,[138] but he does not accept the Stoic notion of the wise man possessed of absolute virtue. God alone is good in the absolute sense;[139] and he quotes Saint Paul saying he (Paul) is perfect and yet not perfect.[140] There is a perfection attainable by the just man here on earth,[141] but there is a higher perfection belonging to those who are in God's presence in whom faith has given place to vision and the virtue of charity issues forth in one unfailing and unutterable act of love.

(*d*) *Virtutes Cardinales*

SAINT AMBROSE adopts the old traditional classification of the four cardinal virtues, but establishes them on a new basis and reinterprets them in the light of faith. With Cicero he holds that a man cannot possess one of them perfectly unless he possesses them all. He quotes examples from the Old Testament to show that in the actions of every great man all four are found. Cicero says that prudence is concerned with clear perception and intelligent grasp of the true: that it consists in the knowledge of the true, in the search of and the finding of the true.[142] Saint Ambrose holds that it concerns itself with the pursuit of the true.[143] He is quite conscious that he is giving a turn to Cicero's definition for he says that the first amongst ourselves (the Latins) have given as its definition that prudence consists in the knowledge of the truth.[144] But Saint Ambrose does not consider the investigation of the true as philosphical speculation but as the pursuit of the knowledge of God and His mysteries.

Cicero tells us that man is superior to the brute especially by the gift of reason whereby he sees the sequence of events, perceives the causes of things and comes to understand the relation of cause and effect, surveys easily the course of his whole life and makes the necessary provision for living it, that the search after truth is peculiar to man.[145] But the motive and term of this pursuit is to satisfy an eagerness to see, to hear, to learn something new: a knowledge of the secrets of creation he considers necessary for a happy life.[146] Then too knowledge results in a reputation for wisdom. For Cicero the motive of prudence is to know an answer to man's innate desire for knowledge, to provide for life and to attain the glory of being known for one's wisdom. It is the natural man's purpose as the Stoic conceived it. The object of prudence which he often links with wisdom is natural truths which can serve self in some way in this life.

On the other hand, Saint Ambrose identifies wisdom and prudence [147] and begins by saying that no man is prudent who knows not God.[148] And, he asks, how can he be wise who does not fear his God.[149] To Saint Ambrose it is unseemly to pursue secular knowledge and to leave aside the grounds of salvation. He repeats the statement of Cicero that man excels the brutes especially by reason whereby he seeks out the causes of things.[150] But for Saint Ambrose this means to search out the Author of his race, God, in whose hand is our life and death, who rules the world and to whom we know we must give an account of our actions. For nothing helps more to live uprightly than to believe He will be our judge. For Saint Ambrose then prudence searches out God as our Creator and Judge and leads us to govern and ordain our lives accordingly. He gives Moses as a superb example of a wise man who, instructed in all the wisdom of the Egyptians, judged that wisdom loss and folly and turning from it sought God with intense desire.[151] Saint Ambrose, we must remember, was addressing his clergy whom he was trying to form in greater piety; for them Sacred Learning was all important. We cannot conclude from his statement here that he considered secular learning useless and vain in itself.

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[137] *Loc. cit:* quasi secunda quaedam honesta.

[138] III, 10: Alia igitur prima, alia media officia. Prima cum paucis, media cum pluribus.

[139] III, 11.

[140] Philip. III, 12, 15.

[141] III,11: Duplex enim forma perfectionis . . . alia hic, alia ibi: alia secundum hominis possibilitatem, alia secundum perfectionem futuri.

[142] Cic. *De Off.* I, 5, 15: In perspicientia veri sollertiaque versatur. *Op. cit.*, I, 6, 18: In veri cognitione consistit. I, 5, 15: Indagatio atque inventio veri.

[143] I, 115: In veri investigatione versatur.

[144] I, 118: Primi igitur nostri definierunt prudentiam in veri consistere cognitione.

[145] Cic. *De Off.* I, 4, 11: Homo autem quod rationis est particeps, per quam consequentia cernit, causas rerum videt earumque progressus et quasi antecessiones non ignorat . . . facile totius vitae cursum videt ad eamque degendam praeparat res necessarias.

[146] *Op. cit.*, I, 4, 13.

[147] Saint Ambrose in his exposition of prudence (I, 117–119) uses Scriptural texts which employ either of the terms *sapiens* or *prudens*. And when he states that all four cardinal virtues are found in one virtuous deed he puts wisdom as the first of the four; Adverte hic omnes virtutes in uno facto. Fuit sapientiae, Deo credere nec filii gratiam anteferre auctoris praecepto: fuit justitiae etc. (I, 119).

[148] I, 117: Nemo enim prudens est qui Deum nescit. I, 126: Primus igitur officii fons prudentia est.

Cicero considers justice in its strict sense that a man injure no one unless first provoked by injury, and to it in a wider sense of the term he joins charitableness which may also, he says, be called kindness or generosity. Justice maintains society and the common life of men. It is based on good-faith, fidelity to one's word. He considers charitableness a sequence of justice and bases generosity on the law of nature, the law of affinity and the common bond of the human race.

Saint Ambrose rejects the definition of justice which allows redress of injuries by injury. The Gospel has put that aside; the Spirit of the Son of Man should be in us, who came to give grace, not to bring harm.[152] Prudence cannot exist without justice, for piety towards God is the beginning of understanding.[153] With Saint Ambrose piety flows from justice; justice establishes our relation first of all with God.[154] He accepts the words of Cicero: the foundation of justice is faith.[155] But by *fides* Cicero means good-faith, while Saint Ambrose means Christ; the faith of all is Christ; Christ is the foundation and upon Him we place our works of justice.[156] Saint Ambrose also links generosity with justice and treats it much more at length than Cicero. Charitableness, sharing our goods with others, stands out in this treatise with great prominence. This is due to the Christian doctrine of love of neighbour and also to Saint Ambrose's teaching on private ownership which would make the right to hold private property problematical. But this subject is beside our theme. The motive for charity is not only Cicero's union of nature but the Will of God.[157] The example of Christ is the authority for his teaching on charity; He has given us the rule to follow.[158] With Saint Ambrose liberality is a species of justice; there is a *quid pro quo*. The giver receives a return for his gift; he thereby wins eternal life and atones for his sins.[159] Good will according to Cicero is based on the bonds of affinity and fellowship;[160] in Saint Ambrose it is based on common faith, baptism, grace and the Holy Eucharist.[161]

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[149] I, 117: Quomodo sapiens qui Deum suum non timet.

[150] I, 124.

[151] I, 123.

[152] I, 131.

[153] I, 126: Pietas enim in Deum initium intellectus.

[154] I, 127: Justitiae autem pietas est prima in Deum.

[155] I, 142: Fundamentum ergo est justitiae fides.

[156] *Ibid.* Fides enim omnium, Christus. Paulus fundamentum posuit Christum ut supra eum opera justitiae locaremus.

[157] I, 135: Ergo secundum Dei voluntatem vel naturae copulam invicem nobis esse auxilio debemus.

[158] I, 151: Consilium prompsimus, auctoritatem petamus. . . . Christus pauper factus est . . . ut omnes sua inopia ditaret. Dedit regulam quam sequamur.

[159] I, 150, 155.

[160] Cic. *De Off.* I, 17, 55.

[161] I, 170: Augetur benevolentia Coetu Ecclesiae, fidei consortio, initiandi societate, percipiendae gratiae necessitudine, mysteriorum communione.

In treating fortitude Saint Ambrose follows Cicero in the divisions and characteristics of the virtue. He passes over courage in war as not pertaining to clerics.[162] But for Cicero's phrase freedom from passion, Saint Ambrose uses the positive terms, to discipline the mind, to control the flesh and reduce it to servitude,[163] thereby introducing the active element of Christian asceticism. Fortitude is the virtue of the athlete of Christ.[164] Saint Paul urges us to exercise ourselves unto piety, that grounded and rooted in grace we may fight the good fight. The pagan virtue of the natural man is transformed into the supernatural virtue of the man of God.

Perhaps of all the four cardinal virtues, Saint Ambrose is least successful in putting the Christian imprint upon temperance.[165] He devotes little space to it; except in the case of anger, he does not emphasize temperance as the virtue which curbs the passions. It gives tranquillity of mind, gentleness, moderation, regard for what is virtuous and reflection on what is seemly. It results in an order, harmony and propriety of life. This, of course, is the language of the Stoics without change.

Saint Ambrose was a pioneer in the field of exposition of Christian ethics. He was composing a treatise on Christian conduct in a language which had not before carried that burden. He took the language as he found it. He had at hand Cicero's treatise which covered the ground in terms of Stoicism. In making use of this, he had no intention of adding Christianity to Stoicism as an annex. He could not have popularized Christian thought in that way, even though he had tried. In his time Cicero was still read in the schools for his rhetoric, but Stoicism as a system was distinctly on the wane.[166] Saint Ambrose takes from Cicero his general plan and vocabulary. He will even at times take whole sentences with scarcely any change in wording, but his approach is entirely different from that of Cicero. At the very beginning he places his treatise on the spiritual level by basing it on the truths of faith, by outlining a way of life that has not this world but the next as its term. Fundamental notions such as *natura*, *virtus*, *vita beata*, he attempts to interpret in a Christian sense. That he was not wholly successful is quite evident. Sometimes Stoicism still shows through, and once in a while in matters of detail he does not appear to have succeeded in entirely breaking away from the Stoic point of view. Even when he gives a Scriptural interpretation to a statement which is Stoic in its origin, he does not always in his reasoning follow through. Perhaps one reason is that it is not possible to do with Stoicism what Saint Thomas did with Aristotelianism. At any rate, Saint Ambrose in mental power is not a Saint Thomas Aquinas.

But a final judgment on the importance and place of Saint Ambrose in the process of the Christianization of the Latin language must await further study of his other works from this point of view. Such researches, to be productive of worthwhile results, should be devoted to the study of the meaning which Saint Ambrose himself attaches to the terms he uses, not simply to a collection of words and phrases in his works which can be found in Cicero, and to the interpretation of them in the Ciceronian sense. The evidence which this treatise *De Officiis Ministrorum* provides points to a conclusion which would attribute to Saint Ambrose an important part in the remoulding of the meaning of the Latin words, so that the language of Rome became for more than a thousand years almost the only medium of the expression of Christian thought in the west.

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[162] I, 175: Nec ad arma iam spectat usus noster, sed ad pacis negotia.

[163] I, 180: exercere mentem, afficere carnem et in servitutem redigere.

[164] I, 182: Haec vera fortitudo quam habet Christi athleta.

[165] I, 219–220.

[166] In a letter written about twenty years after the publication of the *De Officiis* of Saint Ambrose, Saint Augustine tells us that Stoicism had died out in Africa and that the questions discussed in Cicero's Dialogues no longer interested men at Carthage or Rome; and he adds that he thinks the same would be true in Greece and the East. Saint Augustine, Epist. 118, 12, CSEL. 34, p. 676: quando iam ne ipsorum quidem multo recentiorum multumque loquacium Stoicorum aut Epicureorum cineres caleant, unde aliqua contra fidem Christianam scintilla excitetur; *ibid.* 21: quos (*Stoics and Epicureans*) iam certe nostra aetate sic obmutuisse conspicimus ut vix iam in scholis rhetorum commemoretur tantum; *ibid.* 9: quando quidem hic . . . et Romae expertus es quam neglegenter habeantur (*the questions discussed in Cicero's Dialogues*) et ob hoc neque doceantur neque discantur . . . cum duae tantae urbes Latinarum litterarum artifices, Roma et Carthago, nec taedio tibi sint ut a te ista perquirant nec taedia tua curent ut te ista perquirentem exaudiant . . . ne in Graecis atque orientalibus urbibus quemquam de his rebus molestum interrogatorem feras.

The Teaching of the Canonists on Usury

(*XII*, *XIII and XIV Centuries*)

T. P. McLAUGHLIN, C.S.B.

THIS study has but modest pretensions. Its aim is to set forth the teaching of the canonists of the twelfth, thirteenth and fourteenth centuries on some points touching the question of usury.[1] The numerous studies which have been done on this subject of perennial interest, and of which the basis is constantly being widened rendering necessary an investigation into the whole economic teaching and economic life of the Middle Ages, have usually been concerned with the teaching of the theologians, the canons of the councils, the papal letters, the decrees of the civil authorities and especially the practice. Among the canonists those of the fifteenth, sixteenth, and even later centuries have been given the preference. At this time the canonists are all concerned with the problems of usury, of banking, of contracts, and with all the aspects of the commercial life which has become an important fact of these times. They have in consequence written numerous special treatises on these subjects. The quantity and variety of the literature of this period is more tempting than the shorter commentaries of the earlier period.

It is these last, however, which supply the material of this article, the works of the canonists commenting upon the texts of the *Corpus Juris Canonici*[2] from the earliest commentator of the Decretum of Gratian until the end of the fourteenth century.[3] During this period, the golden age of canonical studies, the teaching of

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[1] The common acceptation of the word *usura*, usury, has been used in this study. It signifies that which is received in excess of the principal and also the crime of one who exacts something in excess of the principal because of the loan. To avoid confusion the word interest has not been employed and the Latin form *interesse* has been retained. See below, the sections on the nature of usury and on the *poena nec in fraudem*.

[2] The edition used is that of Friedberg, *Corpus Juris Canonici* (Leipzig, 1879).

[3] The following works on the Decretum and Decretals have been used: Paucapalea, *Summa*, ed. J. F. von Schulte (Giessen, 1890), in 8°; Rolandus, *Summa* (or *Stroma*), ed. F. Thaner (Innsbruck, 1874), in 8°; Stephen of Tournai, *Summa*, ed. J. F. von Schulte (Giessen, 1891), in 8°; Rufinus, *Summa decretorum*, ed. H. Singer (Paderborn, 1902), in 8°; The *Summa* of Huguccio, still unedited, has been studied from the manuscript: Paris, Bibl. Nat., Ms. *Latin* 3892; Bernard of Pavia, *Summa decretalium*, ed. E. Laspeyres (Ratisbon, 1860), in 8°; For the *Glossa ordinaria* of Joannes Teutonicus and Bartholomew of Brescia, have been employed the two following editions of the Decretum: *Decretum Gratiani cum apparatibus Joh. et additionibus Bar. Brix.* (Nuremberg, 1493), in folio, and *Decretum Gratiani* (Lyons, 1560), in folio; The *Glossa ordinaria* of Bernard of Parma on the Decretals is found in the *Compilatio nova decretalium domini Gregorii papae noni* (Speyer, 1486), in folio; Idem, *Casus longi super decretales* (Lyons, 1500), in 4°; Raymund of Penafort, *Summa de casibus* (Verona, 1744), in folio. This edition contains a number of additions by William of Rennes. Innocent IV, *Commentaria in quinque libros decretalium* (Venice, 1578), in folio; Hostiensis (Henricus de Segusia), *Summa aurea* (Lyons, 1568), in folio; Idem, *Commentaria in quinque decretalium libros* (Venice, 1581), 3 vols. in folio; Gulielmus Durandus, *Speculum juris* (Venice, 1577), 3 vols. in folio. This edition contains some additions by Joannes Andreae and Baldus. Archidiaconus (Guido de Baysio), *Rosarium super decreto Gratiani*, 1535, in folio; Joannes Andreae, *Glossa ordinaria* on the Liber Sextus in the edition of Venice, 1497, in folio; Idem, *Glossa ordinaria* on the Clementinae (Venice, 1496), in folio; Henricus Bohic, *Commentaria in quinque decretalium libros* (Venice, 1576), in folio.

The treatise *De usura* of Robert de Courçon, published by G. Lefèvre in the *Travaux et mémoires de l'université de Lille*, Vol. X, n° 30 (Lille, 1902), has been omitted. The great opponent of usurious practices has not much by way of commentary on the legal texts and his treatise, forming as it does part of his Penitential, has a different aim and treatment than the canonists on most of the subjects of Canon Law reaches its full development and after the end of the fourteenth century the study of Canon Law rapidly declines. If this is not true of their teaching on usury it is owing to changed social conditions, but it remains true that the latter will also have brought about a change in the problems which are treated, in the method of treatment and in many cases in the solutions to the problems. The sources here used are the works of the mediaeval canonists, omitting all who belong to modern times, or, if one wishes to include the fifteenth and sixteenth centuries in the mediaeval period, omitting all those who can be said to mark the transition from mediaeval to modern times.

Gratian, shortly after the year 1140, composed his Decretum embodying all the ancient law of the Church. Dealing with the clerical life and the impediments to the reception of Holy Orders, the author has assembled in Distinctions XLVI and XLVII eight canons forbidding clerics to demand usury and declaring that one guilty of this crime may never be raised to orders.[4] If he is already in orders he will be deposed. In the second part of his work he presents a case in the Causa XIV which gives rise to several questions concerning the exaction of usury by anyone, cleric or layman. In Questions III to VI he asks: Is it permitted to clerics or to the laity to take usury? May alms be given from what is acquired by usury? May penance be done without the restitution of what has been acquired in this manner? The last two questions will be completely omitted from this study. All of the texts presented by Gratian belong to the early centuries, almost exclusively to the fourth, fifth and sixth centuries. There are no recent decrees.[5] The canons offer little variety and no contradictions so that Gratian experienced little difficulty in working out his *Concordia discordantium canonum* on this subject. Consequently his commentary is extremely brief but establishes the following points: To demand or receive or even to lend expecting to receive something above the capital is to be guilty of usury; usury may exist on money or anything else; one who receives usury is guilty of rapine and is just as culpable as a thief; the prohibition against usury holds for laymen as well as clerics but, when guilty, the latter will be more severely punished.[6]

After the publication of the Decretum the legislation of the councils, both gen-

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the works which have just been enumerated. The work is important for a study of the church's efforts to combat usury about the year 1200 and is being studied by others at the present time. The *Summa* of Raymund of Penafort, on the contrary, though concerned to a great extent with the practice of the confessional, contains many observations by a competent canonist who argues from the legal texts, and has consequently been utilized.

One canonist, of the early fifteenth century, Panormitanus (Nicolaus Tudeschi) has also been used. His great work, *Commentaria in quinque libros decretalium* (Venice, 1588), 8 vols. in 4°, which follows the method of his predecessors whose writings are extensively used and quoted, may really be said to represent the state of the canonical teaching at the close of the mediaeval period. The numerous notes of the glossators of the Decretum before the year 1234, apart from the *glossa ordinaria*, are for the most part still inaccessible, though many of their opinions have been quoted by later canonists. Only the introductory volume to this literature has so far been published by S. Kuttner, *Repertorium der Kanonistik*, I, *Prodromus corporis glossarum* in *Studi e Testi*, vol. 71 (Vatican City, 1937). Two collections of glosses on the *Quinque Compilationes Antiquae* have been used: that of Vincentius Hispanus on the *Compilatio Tertia* contained in Ms. Vat. *Lat.* 1378 and of Tancredus on the first three *Compilationes* in Ms. Vat. *Lat.* 1377.

A final remark: the page and folio references will be omitted when the text is a gloss or commentary upon a particular word.

[4] D.46.c.8–10; D.47.c.1–5.

[5] There are but two texts after the time of Gregory the Great, these being from a Capitulary of 802.

[6] Dictum before C.14.q.3.c.1: Quod autem praeter summam emolumenta sectari sit usuras; after c. 4: Ecce evidenter ostenditur quod quicquid ultra sortem exigitur usura est; before q.4.c.1: Quod vero nec clericis nec laicis liceat usuras exigere. Cf. also summaries of q.3.c.1: Qui plus quam dederit expetit, usuras accipit; c. 2: Quicquid supra datum exigitur usura est; c. 3: Quicquid sorti accidit usura est; c. 4: Quando amplius exigitur quam detur usura accipitur; q.4.c.8: Etiam laicis usura dampnabilis est.

eral and provincial, becomes abundant. It is moreover a period of great pontifical activity, the popes writing numerous letters in reply to questions regarding the law on all points. Alexander III and Innocent III are particularly concerned with the subject of usury which becomes an important problem after the middle of the twelfth century. These two elements, canons of general councils and papal letters, are incorporated in the official collections of Canon Law, the Decretals of Gregory IX (1234), the Liber Sextus of Boniface VIII (1298) and the Clementine Constitutions of Clement V (1317). The teaching of these texts on usury will be summarized later in dealing with the special problems proposed.

The science of Canon Law beginning with Gratian, though with most of the elements of its method already to be found in Yvo of Chartres, Bernold of Constance, Alger of Liege, and Abelard, developed rapidly, producing an abundant literature composed of *glossae* and *summae* upon the Decretum and the collections of Decretals. From these sources large extracts will be given in the footnotes when the texts are not too long and diffused, because of the difficulty experienced by many interested in the question of usury in obtaining these works and also in making use of them. It is thought that these texts may thus be rendered more serviceable to those attempting a complete study of the teaching of the mediaeval Church on usury.

On one question in particular, that of the position of the Civil Law on the lawfulness of usury, another body of literature will be used. The collections of Justinian, the *Corpus Juris Civilis*,[7] like the Decretum of Gratian, contain the texts of a period much earlier than that here studied. Moreover, their teaching is directly opposed to that of the canonical collections. During the centuries interesting us glosses and commentaries were composed upon this collection of Roman Law by the civilians, the doctors of Civil Law, men who were mediaeval Christians well acquainted with the teaching of the Church on the question of usury.[8] It will be of interest to examine their treatment of texts permitting the taking of usury and compare it with the doctrine of the canonists, on their side deeply versed in Roman Law, but explaining texts which forbid all usury.

Except for casual references to them the compilations of *droit coutumier*, the ordonnances of civil authorities, the practice of the courts, and the teaching of the theologians have been wholly omitted. This omission is deliberate and is in no way indicative of an impression that they are not important, or even less important than the texts here exposed. This is intended merely to emphasize one of the elements required in a complete study of the teaching on usury in the Middle Ages. The conclusions drawn will conform themselves, it is hoped, to the limited scope of the sources studied. It is hoped also that the accusation of arguing from theory to fact may be avoided.

The matters here treated will be grouped under four headings:

I. Opposition between the Canon and Civil Law.

II. The nature of usury.

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[7] Edition of Krueger, Mommsen, Schoell and Kroll (Berlin, 1914–1918).

[8] The following writings have been chosen as representative of the teaching of the civilians: Azzo, *Summa in codicem* (Lyons, 1530), in 4°; The work, *Azonis ad singulas leges XII librorum codicis commentarius et magnus apparatus* (Lyons, 1596), in 4°, has also been used occasionally. According to Savigny, *Geschichte des römischen Rechts im Mittelalter*, V (2nd ed., Heidelberg, 1850), p. 17, this is the work of one of his auditors. The Grand Gloss of Accursius has been used from the editions, *Digestum vetus, infortiatum et novum* (Lyons, 1549–1550), 3 vols. in folio and *Codex . . . Justiniani* (Geneva, 1625), in folio; Cinus, *Super Codice* (Venice, 1493), in folio; Bartolus, *Omnia Opera* (Venice, 1590–1615), 11 vols. in folio. Baldus, *Super Codice* (Venice, 1496), in folio.

III. Cases where something may be received above the capital.

IV. Punishment of usurers.

I. *OPPOSITION BETWEEN THE CANON AND CIVIL LAW*

A NUMBER of questions will be examined here. What is the opinion of the canonists on the permission to demand usury accorded by Roman Law? How do the civilians interpret the prohibition of the canons? Do they admit that the Civil Law does permit usury? May the Civil Law permit usury if it is forbidden by the Canon Law?

A. *The canonists and the Civil Law*

DOES the Civil Law permit usury or has it been modified? May it allow what has been prohibited by the canons? The legislative texts do not make any direct reference to the teaching of the Roman Law on usury. The Lateran Council of 1139 declares that the avarice of usurers is detested by both divine and human laws [9] and a council of Levaur held in 1368 states that both Canon and Civil Law prohibit usurious contracts.[10] The Council of Vienne, 1311–1312, presided over by Clement V, declares that the chief officials in any community commit an offense against God who draw up, or cause to be drawn up, statutes permitting usury to be charged and refusing to allow claims for recovery of usury already paid. There is no doubt concerning the mind of the Church at this time on the question whether the Civil Law may allow usury or not. However, the decree of Vienne is concerned with the statutes of many towns of the thirteenth century which were permitting usury up to a certain point and has not the texts of Roman Law in mind.[11]

A text of Saint Augustine inserted in the Decretum states that the *leges* and the secular judges do compel usury to be paid,[12] but as Huguccio and Raymund of Penafort [13] remark, he is here relating a fact and not a right. The commentators Rufinus,[14] Stephen of Tournai [15] and Bernard of Pavia [16] note that the Civil Law does permit usury to be exacted. Huguccio says that the Roman Law once permitted usury to be demanded, but this law was changed by the Novella in which it was declared that the laws did not disdain to imitate the canons. This will hold especially in the case of usury where the canons differ from the laws.[17]

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[9] Can. 13 (Mansi, 21, 529).

[10] Can. 120 (*Id*, 26, 538): Cum utroque jure contractus usurarii reprobati existant.

[11] Clem. V.5.c.1. The *Coutumes d'Alais*, for example, of the thirteenth century allow usury to be charged, but no matter how long payment is delayed it may never surpass the capital. Cf. edit. Beugnot in appendix to *Les Olim*, Vol. III (Paris, 1848), p. 1496.

[12] C.14.q.4.c.11: Quid dicam de usuris quas etiam ipsae leges et judices reddi jubent?

[13] *Summa*, Lib. II, tit. 7, n. 6, p. 212: Quia ibi respicit factum et non jus. Raymund of Penafort (died 1275), compiler of the Decretals for Gregory IX composed his *Summa* shortly after 1234. For the text of Huguccio see below, note 17.

[14] *Summa*, C.14.q.4.c.11, ed. Singer, p. 342: Legibus etenim humanis permittuntur usure. This work was probably written between 1157 and 1159. Magister Rufinus became bishop of Assisi.

[15] *Summa*, D.16.c.1, ed. Schulte, p. 19: ut in usuris quae prohibentur in lege dei, permittuntur lege fori. Stephen, who died as bishop of Tournai in 1203, wrote his commentary on Gratian between 1160 and 1170.

[16] *Summa*, V.15.n.13, ed. Laspeyres, p. 239: Notandum quod legibus non improbatur contractus usurarum. Bernard died bishop of Faenza in 1213. Besides his *Summa* which belongs to the period 1191–1198 he composed the *Compilatio prima* or *Breviarium Extravagantium*, 1187–1191, in which he furnished the model for all the official collections of decretals. Cf. G. Le Bras, "Bernard de Pavie" in the *Dictionnaire de droit canonique*, II (1937), col. 782 ff.

[17] *Summa*, Paris, Bibl. Nat., Ms. *Latin* 3892, fol. 218^{v}, col. 1 and 2: Sed hoc verum est secundum leges veteres sed Authentica dicit quod nostrae leges non dedignantur imitari sacras et canonicas regulas, et hoc dicitur praesertim in usuris. . . . Quia ergo secundum sacras regulas usurae non possunt peti, et solutae possunt repeti, etiam secundum leges humanas nec possunt peti, et solutae possunt repeti. . . . Ergo hic Augustinus dicit secundum veteres leges; recitat non jus sed factum.

The Gloss on a text of the Decretum condemning the decree of the Civil Law permitting a married person to enter a monastery without the other party's consent, asks how Justinian could have enacted a decree against the divine law. It answers that some hold that he erred or acted through ignorance; or he permitted it as he did in the case of usury, in order to avoid a greater evil, rapine.[18] But in another place the Gloss says that Justinian himself abrogated all his legislation on usury when he declared that his laws did not disdain to imitate the canons and also when he prescribed the observance of the first four general councils, including that of Nicaea which prohibited usury. Consequently the Civil Law as it stands today does not allow usury.[19] The author is not convinced, however, by this last line of argumentation and proceeds to allow his students to choose between this opinion and the first one which holds that usury is permitted by the Civil Law to avoid rapine.[20]

Bernard of Parma [21] adopts the second of the two opinions, namely, that Justinian modified his earlier legislation in the manner indicated so that today the Canon and Civil Law are in agreement in their prohibition against usury.[22] Innocent IV [23] recognizes that the legislation concerning usury is not the same in the Civil as in the Canon Law. The former allows in some cases to be demanded as *interesse* what the canons consider usury.[24]

Raymund of Penafort states that the laws which permit usury do not bind, that they have been already abrogated. He adduces arguments from authority, from reason and from the Civil Law itself. In the first group he places the texts from Scripture forbidding usury. In the second group are two reasons. Firstly, no law, no dispensation, is to be admitted against what is forbidden by the natural law and this is the case with usury. Secondly, an inferior has no authority over his superior. Consequently the Emperor of the world may not enact a law opposing the law of the Emperor of heaven. Finally, the laws permitting usury have been abrogated by the Civil Law itself for the two reasons already stated, that Justinian says his laws imitate the canons and because he confirmed the council of Nicaea. Hence it is no longer correct to say that the Civil Law admits usury. On the other hand, those laws which permit usury to be demanded by reason of *interesse* or on account of delayed payment are good and to be approved if they are rightly understood.[25]

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[18] Gloss on D.10.c.1. *lex humana:* Vel ideo permisit hoc ut gravia vitarentur, sicut usuras permisit ut vitarent rapinas.

[19] On C.14.q.4.c.11. *reddi:* Potest tamen dici quod secundum leges non sunt dandae usurae, tum quia sacrae leges non dedignatur imitari sacros canones . . . tum quia imperator jubet servari ea quae statuta in Nicaeno concilio. . . . Sed Nicaenum concilium prohibet usuras. . . . Cum ergo imperator constitutione sua confirmavit statuta Nicaeni concilii, patet quod voluit derogare omnibus legibus quae loquuntur de usuris.

[20] *Ibid.:* Vel dic ut dixi supra supra dist. 10.c.1. Cf. note 18.

[21] Bernardus Parmensis or Bernardus de Bottone, pupil of Tancred and professor of Canon Law at Bologna, died in 1266. His work, which became the *glossa ordinaria* of the Decretals of Gregory IX, seems to have been completed only shortly before his death. Cf. the article, "Bernard de Parme," in the *Dictionnaire de droit canonique,* II (1937), col. 781–782.

[22] Gloss on X.V.19.c.3. *multi:* Immo etiam jure civili usurae prohibitae sunt, unde nullo jure peti possunt.

[23] Innocent IV, Sinibaldus Fliscus, studied and taught at Bologna. He was pope from 1243 to 1254. His commentary was completed very shortly after the Council of Lyons of 1245 according to J. F. von Schulte, *Geschichte der Quellen und Literatur des canonischen Rechts,* II (Stuttgart, 1877), p. 91 ff. S. Kuttner dates it about 1251. Cf. "Decretalistica" in *Zeitschrift der Savigny Stiftung, kanon. Abteil.* XXVI (1937), 462–463.

[24] *Commentaria* on X.V.39.c.48: Usurae etiam computantur in hoc communi interesse secundum legem Digestorum. Secundum canones, cum usurae omnino sint prohibitae, nullomodo computantur in interesse.

[25] See the whole of Lib. II, tit. 7, n. 6, p. 211–212: Quid de legibus quae permittunt usuras exigi, numquid tenent? Dico breviter quod non; immo sunt omnes abrogatae, quod probo auctoritate, ratione et civili jure. Auctoritate

According to Hostiensis,[26] the Roman Law did formerly permit usury on account of the uncertainty of prices and he proceeds to quote the entire passage from Azzo which we shall see shortly.[27] Today however, he states, the same prohibition exists in both laws because the acceptation of the canons of Nicaea modified the laws contrary to these canons.[28] He combats the opinion of those civilians who claim that since this council speaks only of clerics there is no confirmation by the Civil Law of the prohibition concerning laymen. True, he says, the council does forbid only clerics to receive usury, but the sacred texts which it invokes in support of its decree are general and apply to the laity as well.[29] Finally he enunciates the principle that where it is a question of the sinfulness of an act the Civil Law must give way before the Canon Law and this is what the Emperor meant when he said that he desired his laws to imitate the canons.[30]

In one passage Joannes Andreae [31] says that usury is perhaps forbidden by the Civil Law today; [32] in another place he states more clearly that it is, since the laws claim to follow the canons.[33] Those students who desire a full discussion of the problem are referred to what he has written in his *Quaestiones Mercuriales.* There, discussing the fourth of the *regulae juris* of the Liber Sextus, he treats of the apparent opposition between the Canon and Civil Law on the subject of usury. He lays down the general principle and then makes an application to the question of usury. The Civil Law may differ from the Canon Law, he states, in two ways. Firstly, the Civil Law may contradict what is decreed by the canons. In such a case the Civil Law has no value. Secondly, the Civil Law may differ from the Canon Law, not by flat contradiction, but by omission. For example, it may omit to prohibit what is forbidden by the canons. It leaves to the divine and Canon Law the prohibition and punishment of something which more properly falls within the scope of these laws. From this he concludes that by not forbidding usury the Civil Law

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psalmi. . . . Ratione duplici: una, quia prohibitae sunt jure naturali, ut in auctoritatibus praemissis; sed contra tale jus, nulla lex, nulla dispensatio potest admitti. . . . Secunda ratio est quia par in parem non habet imperium ut X.I.6.c.20, multo minus minor in majorem ut D.21.c.4. Ergo imperator terrae non potuit condere legem contra imperatorem coeli. Jure civili, nam dicit imperator quod sacrae leges non dedignatur imitari sacros canones. . . . Item dicit imperator se amplecti quattuor concilia. . . . Illae tamen leges quae permittunt usuras exigi ratione interesse, vel ratione morae, bonae sunt.

[26] Henricus de Segusia, Henry of Susa, student at Bologna and professor at Paris, became cardinal-bishop of Ostia, hence the name Hostiensis. The *Summa Aurea* or *Summa super titulis* belongs certainly to the period 1250–1261, the first edition having been lost in a fire. The *lectura* or *commentaria* was begun at the request of his students in Paris but he continued to work upon it until shortly before his death which occurred in 1271. On the subject of usury the *commentaria* often refers to what has been written in the *Summa.* Cf. Schulte, *op. cit.*, II, 123 ff. F. Gillmann seems to be correct in saying that the *Summa* was completed by 1253. Cf. *Archiv für kath. Kirchenrechts* 102 (1922), 36, note.

[27] *Summa, de usuris,* n. 7, fol. 373^{v}. Cf. p. 92, notes 92–94.

[28] *Id.* n. 8 (*ibid.*); *Commentaria* on X.V.19.c.3. *utriusque testamenti.*

[29] *Summa, loc. cit.:* Quidam legistae voluerunt dicere quod non obstat concilium Nicaenum. Illud tantum de clericis et non de laicis loquitur et ideo videtur laicis concessum. And again: Sed certe est quamvis illud concilium de clericis tantum loquatur, auctoritas tamen sacra quae in eo inducitur generalis est et tam in clericis quam in laicis locum habet; *Commentaria, loc cit.*, Nicaena vero est una de quattuor . . . in qua prohibentur usurae etiam laicis . . . et clericis multo fortius.

[30] *Summa, loc. cit.:* Sed cum de peccato agitur silet virtus legis civilis . . . et in talibus imperator vult quod leges suae consequantur nedum quattuor concilia sed generaliter canones.

[31] This celebrated canonist, a layman, was born about 1270 and died in 1348. He professed at Bologna during the years 1302–1348 and during this period his numerous works on the three official collections of Decretals were written. Cf. Schulte, *op. cit.*, II, 205 ff.

[32] Gloss on VI°.V.5.c.1. *animas:* Quia prohibitae sunt usurae in novo et veteri testamento et jure canonico . . . et *forte hodie* jure civili.

[33] Additions to the *Speculum Juris* of G. Durand, Lib. IV, part. 4, addit. c, p. 502: Item opponit generaliter etiam jure civili usuras damnatas, cum leges sacros canones imitemur, etc.

has, so to speak, removed all penalties against usurers, but it has not removed the prohibition itself.[34]

Bohic states very briefly that the prohibition of usury is the same in both the Civil and Canon Law.[35] Panormitanus [36] opens his examination of the question by attacking the opinion held by Bernard of Parma in the Gloss, namely that the Civil Law forbids usury by its confirmation of the canons of Nicaea. He accepts the view of those civilians, opposed by Hostiensis, stating that this council speaks only of clerics and consequently in accepting its decrees, Justinian does not forbid laymen to lend at usury, especially since in this very law and in later ones he expressly permits usury in certain cases.[37] Elsewhere, however, the Emperor seems to have professed to follow the canons on those matters which concern the salvation of the soul and so usury can be considered as forbidden by the Civil Law. In fact, a civil law opposed to the divine law is not a law at all; an inferior cannot destroy the law of his superior.[38] Though, *de facto*, the texts of the Civil Law do permit usury up to a certain point, these texts have no longer force of law.[39]

B. *Teaching of the civilians on the canonical prohibition*

THERE is for us no doubt that the Code and Digest of Justinian permit usury forbidden by the Canon Law. But in the light of the Church's teaching with which they are thoroughly conversant, how are the civilians, the commentators of these collections, going to interpret them and answer the numerous questions which are raised? Did in fact the law of Justinian permit the taking of usury? Does it still permit it? Is there contradiction between the Civil and Canon Law? If so, is the Civil Law binding? If not, how reconcile the apparent contradiction between the titles *de usuris* of the Roman Law and the same title in the Decretals? May the Emperor permit usury? Can the cases where the Civil Law permits usury be interpreted as cases where the Canon Law permits something to be received in excess of the capital?

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[34] Regula *peccatum*, art. 5: Ubi dicit quod cum quaeritur an jus civile possit obviare, utrum habeant tantum concordiam, ut quicquid est contra unum, necessario sit contra aliud, quod hoc duobus modis potest intelligi. Primo modo per contradictionem, et dicendum quod non, quia ubi lex civilis contradicit juri canonico, nullius est momenti ut Dist. X, dictum ante c.1. Secundo modo potest intelligi utrum jus civile possit obviare juri divino vel canonico, non per contradictionem, sed per omissionem, vel derelictionem, ut quia omittat aliquid prohibere, cujus prohibitionem et punitionem relinquit juri canonico et divino quibus magis congruit, et hoc modo potest secundum Jo(annem) And(ream) obviare juri canonico et divino. Et per hoc concludit quod contractus usurarius est jure civili permissibilis, permissione indulgentis poenam, non autem permissione tollentis impedimentum et praestantis juramentum. Alexander of Nevo, who thus reports the teaching of Joannes Andreae in the additions to the commentary of Panormitanus on the Decretals (V.19.c.3, fol. 233ʳ), adds: Credo tamen quod in mere positivis in non concernentibus animam jus civile possit obviare juri canonico.

[35] *Commentaria* on X.V.19.c.8, p. 173. Henri Bohic (Boich, Bouhic, etc.), 1310–ca.1350, studied and taught at the Sorbonne. His principal, perhaps his only work, is called *Commentaria, Distinctiones,* or *Lectura.* Cf. A. Lambert, "Bohic," in the *Dict. de droit canon.* II (1937), col. 928–929, and Schulte, *op. cit.*, II, 266 ff.

[36] Nicolaus de Tudeschis or N. Tudeschi, sometimes called Abbas Siculus or Abbas Modernus to distinguish him from another canonist, Abbas Antiquus, was a Benedictine abbot who became archbishop of Palermo, hence his name Panormitanus. He taught in Siena, Parma and Bologna and died in 1445. He ranks among the outstanding mediaeval canonists. Cf. Schulte, *op. cit.*, II, 312 ff.

[37] *Commentaria*, V.19.c.3, fol. 233ʳ: Argumentum tamen hujus glossae potest tolli quia Nicena synodus de qua glossa facit mentionem non loquitur de laicis sed de clericis et sic imperator approbando illam synodum non videtur per hoc laicis prohibuisse usuras, maxime cum ibi et in Authentica sequente certis casibus permittit usuram.

[38] *Ibid.:* Sed potest dici in concernentibus animam profitetur se velle sequi canones. . . . Sed de jure canonico usurae sunt prohibitae, ergo et de jure civili. Item lex civilis contra legem Dei non potest dici lex. . . . Inferior enim non potest tollere legem superioris. Cf. also on II.2.c.8, fol. 238ᵛ.

[39] On V.19.c.18, fol. 245ᵛ: Nam de jure civili non poterant usurae ad libitum exigi sed usque ad certam mensuram, vel summam tantum . . . de quo non est hodie instandum quia omnino usurae hodie prohibentur.

In their commentaries upon most of the texts dealing with usury in the Code and Digest the civilians generally give an exposition which seems to leave out of consideration the prohibition contained in the canons. They are faithful to the wording and spirit of the texts which they have before them. Most of their teaching is to be found connected with three texts, the first law of the Code in which Justinian ordains that the Christian faith is to be held by all [40] and two of the *Authenticae*, the first, *de regulis* [41] which prescribes the observance of the first four general councils and the second, *ad haec*, placed in the title *de usuris* of the Code, where Justinian reduced the legal rate of interest on loans.[42]

The early glossators and commentators have very little or nothing on the questions stated above. Azzo and Accursius treat them very briefly. Only with Cinus have we a fairly complete treatment of the subject. Only a few representative authors of the thirteenth and fourteenth centuries have been chosen but they quote the opinions of others who will be noted.

Azzo [43] affirms that all usurious contracts are forbidden by the law of God contained in the Old and New Testaments.[44] But commenting upon a text of the Code [45] which decrees that the purchaser who obtains possession of an article and does not pay the price when agreed though he is in a position to do so is to be compelled to pay usury, Azzo says that here the usury is paid as *interesse* and not as *usura*. This is permitted either on account of the delay or on account of the utility which the purchaser may have enjoyed from retaining the price. He has received certain fruits from which it is lawful that the creditor be remunerated. This sort of usury is permitted by the Canon Law also he says.[46]

According to Cinus [47] usury is prohibited by both the divine [48] and Canon Law.[49] However, the latter does permit *usura* as *interesse*.[50] This *interesse* may consist either in the loss which the lender has suffered or in the gain which the borrower has received because the lender did not hope for and so had not bargained for this gain and so cannot be considered a usurer, and also because it is really his, resulting, as it does, from the capital which is really his. The borrower has actually made a profit, perhaps because he is a merchant.[51]

Some hold that usury may be demanded either from the contract of loan, the *mutuum*, or in virtue of another contract. The Civil Law permits only the latter and according to these same authors the prohibition of divine law is the same. It forbids usury to be received from the loan contract itself unless loss has been sustained, but it does not forbid usury to be taken because of another contract.[52] Dinus of Mugello teaches that usury is absolutely forbidden by divine, canon and civil law; to lend for usury is a mortal sin as is theft.[53] Jacques de Revigny admits that the divine law regularly forbids usury but does permit it in cases where payment has been delayed. Delay in paying what one owes is an offence and as such is justly punished because delays cause many evils. Usury must then be demanded on account of the delay and not on account of the time which runs between the moment the loan is made and the day it is repaid.[54]

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[40] Code I, 1, *de summa trinitate*, 1, *cunctos populos*.

[41] Auth. *de regulis*, *de ecclesiasticis titulis* — Novella 131.

[42] Auth. *ad haec*, *Nullum credentem agricolae tenere*. . . . Novella 34, chap. 1, placed in the Code following IV.32.16.

[43] Azzo died around the year 1230. Cf. Savigny, *Geschichte des römischen Rechts*, V, 1 ff.

[44] *Summa* on Cod. IV.32.18, fol. 110^r.

[45] Cod. IV.32.2.

[46] *Commentaria*, p. 480: Sed usura ista praestatur tamquam interesse. Ex eo enim quod fructus percepit quasi mora sit tenetur ad usuras tamquam ad interesse . . . et ita non est usura quia praestatur tamquam interesse, non tamquam usura, vel praestatur tamquam utilitas et ideo videretur licita ut scilicet quia emit bonam vineam ex illa pecunia et fructus percepit. Ob istam enim utilitatem agitur ad usuras tamquam ad interesse.

[47] Cinus of Pistoia, died 1336. Savigny, *op. cit.*, VI, 71 ff.

[48] *Super Cod.* on Auth. *ad haec*. The folios of the copy used have not been numbered.

[49] *Id.* on IV.32.15: Cum hodie jure canonico . . . usurae sint reprobatae in totum.

[50] *Id.* on 1.2: Quaeritur numquid usurae sint licitae jure canonico. Dic quod sic quatenus interesse, alias non.

[51] *Id.* on Auth. *ad haec:* Quaeritur . . . numquid ut interesse peti possunt usurae. Dicendum quod sic, sive interesse sit in damno, sive in lucro, dum tamen honesto, quia tale lucrum ex mutuo non speratur, immo quasi tantum sibi reputatur abesse de suo quia tantum lucratus fuisset postea de pecunia forte quia erat mercator . . . et ideo non est usura.

Bartolus furnishes the first fairly complete treatment of our subject.[55] Divine law has prohibited usury [56] and to affirm that it is licit is sinful, and if one pertinaciously holds this opinion he is a heretic as the council of Vienne has declared.[57] But when in a bilateral contract where something is owed by each of the two parties and one of the two delays in fulfilling his part, on account of this delay the Canon Law permits usury to be taken.[58] Also, the purchaser who has received the article derives certain profit from it and here also according to Canon Law usury may be exacted. It is not to be sought as usury but as *interesse*.[59] The canons, in fact, never permit *usura* to be demanded as *usura* but as *interesse*.[60] Moreover, usury may never be demanded as gain on account of the loan.[61] On the authority of a decretal of Gregory IX [62] and following the teaching of Goffredus,[63] Bartolus holds that usury on sea-loans is forbidden by the Canon Law.[64] Finally, referring to the cases in which Canon Law allows something to be received in excess of the capital, he says that these are cases in which usury is permitted by the canons.[65]

The teaching of Baldus [66] will be given closer attention in another paragraph.

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[52] Quoted by Cinus, *loc. cit.:* Quidam dicunt aut usurae petuntur ex alio contractu . . . aut petuntur ex contractu mutui. Si ex alio contractu tunc permittuntur de lege humano. . . . Si ex contractu mutui, non, et lex divina loquitur tantum in mutuo nisi et in mutuo petantur usurae ratione damnorum quia tunc possunt peti.

[53] Cinus on Cod. IV.32.24: Audivi Dynum dicentem quod non quia usurae prohibitae sunt jure divino et jure canonico et civili et quia foenerare est mortale peccatum sicut rapere. Dinus Mugellanus taught at Bologna and died about 1300. See Savigny, *op. cit.*, V, 447 ff.; Schulte, *op. cit.*, II, 176.

[54] Cinus on Auth. *ad haec:* Ja(cobus) de Ra(vanis) dicit quod usurae regulariter non petuntur nisi casu supra, eod. l.2 (IV.32.2), alias non nisi ex mora. Tunc enim quando debitor esset in mora bene concedit usuras peti posse propter debitum suum ex quo fidem frangit. Unde quia tunc oblatio usurarum succedat loco poenae, non est iniquum secundum eum et peti possunt . . . quia lex divina non prohibet usuras circumspecta mora. Dignum est enim malos coerceri. . . . Si vero petuntur, non ut ex mora sed ex praemissione a tempore mutui, tunc succumbit lex humana legi divinae secundum eum. Jacques de Revigny belongs to the law school of Orleans where he studied between 1258 and 1263 and then taught until around 1289 when he was named bishop of Verdun. He died in the closing years of the century. See Savigny, *op. cit.*, V, 605 ff. and more recently, E. Pognon, "Jacques de Revigny jurisconsulte à Orléans" in *Positions des thèses de l'École des Chartes*, 1934, p. 129–136.

[55] Bartolus of Sassoferrato, 1313–1357. Cf. Savigny, *op. cit.*, VI, 137 ff., C. N. Woolf, *Bartolus of Sassoferrato* (Cambridge, 1913); J. L. K. van de Kamp, *Bartolus de Saxoferrato* (Amsterdam, 1936).

[56] Cod. I.1.l.1, *Opera omnia*, Vol. VII, fol. 3ᵛ; Dig. XII. 6, f. 26, Vol. II, fol. 49ʳ.

[57] Cod., *loc. cit.:* Sed certe hoc dicere quod usura sit licita peccatum est et qui diceret pertinaciter quod non esset peccatum esset haereticus. Cf. Clem. V.5.c.1.

[58] Cod. IV.49.5, Vol. VII, fol. 154ᵛ.

[59] Cod. IV.32.2, Vol. VII, fol. 148ʳ.

[60] Cod. I.1.1, Vol. VII, fol. 3ᵛ: Et ideo tenendum est usuras nullo modo exigi ut usuras, sed ut interesse secundum praeceptum juris canonici.

[61] *Ibid.:* Quaedam (usurae) petuntur ut lucrum et istae sunt prohibitae.

[62] X.V.19.c.19.

[63] Goffredus de Trano (of Trani), pupil of Azzo, became cardinal in 1245 and died the same year. His work on the Decretals has not been available for this article except through the numerous references made to him by other canonists. See Schulte, *op. cit.*, II, 88 ff.

[64] Auth. *de nauticis usuris*, l. *nuncium* (Novella 106, preface), Vol. IX, fol. 54ᵛ.

[65] Cod. IV.32.2, Vol. VII, fol. 148ʳ.

[66] Baldus de Ubaldis (Baldo degli Ubaldi), c. 1327–1400. He was a student of Bartolus and taught Civil Law in several Italian universities. His numerous works on the Roman Law are of interest to the canonist. He is well acquainted with the Canon Law and wrote a commentary on the first three books of the Decretals, consequently not treating the title *de usuris*. Cf. Savigny, *op. cit.*, VI, 208 ff.; Schulte,

To permit the exacting of usury is to act against the faith and to believe that it is not sinful to charge usury is heretical,[67] for regularly usury is forbidden by both the Old and the New Testament.[68] He makes his teaching clearer when he says that there are three kinds of usury: "quaedam sunt usurae punitoriae, quaedam recompensatoriae, quaedam lucratoriae." The first kind is allowed by divine law and the canons allow it to be demanded as *interesse* on account of delayed payment.[69] The second kind is also permitted up to a certain amount following the custom of the place which requires compensation by way of permutation rather than by way of penalty. This kind of usury is based on equity, natural reason forbidding one to enrich himself at the expense of another.[70] The third kind is forbidden by divine law.[71] Concerning the first kind, *usura punitoria*, Baldus, following Cinus, says that the *interesse* is allowed both on the loss which the creditor suffers and on the profit which the debtor has made.[72] Why, he asks, is *interesse* allowed and usury forbidden? He answers that the intention is different. In the case of usury the creditor intends to be a usurer, to demand something on account of the loan. In the case of *interesse* the intention is different and the creditor receives something on account of the loss suffered or the gain which the debtor has made.[73]

C. *Does the Civil Law permit usury?*

As WE shall see below in treating the question of whether the Civil Law can permit usury, Azzo does not hesitate to affirm that in fact it does allow it and he proceeds to show how this contradicts the divine law.[74] Accursius in his Gloss on the Code seems to infer that the Roman Law did permit usury though it did not lay within its power to grant such a permission. Today, however, it prohibits usury, and not only excessive usury, but all usury, because its acceptation of the council of Nicaea modified what was already in the laws opposed to the council's decree.[75]

Cinus asks whether the Civil Law does actually permit usury, regardless of what the divine law may have decreed. He reports various opinions on this question. Dinus of Mugello, he says, holds that the same prohibition exists in the civil as in the divine and canon law.[76] Some authors answer by making certain distinctions. Usury may be demanded in two ways, either on account of the loan or on account of another contract. The Civil Law permits the second only.[77] Jacques de Revigny says that the Civil Law permits usury regularly only on account of delayed payment in a contract because even here the divine law allows the delay to be pun-

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op. cit., II, 275 ff.; G. Chevrier, "Baldi de Ubaldi," in *Dict. de droit canonique*, II (1935), col. 39–52.

[67] Cod. I.1.1, fol. 4^{v}.

[68] Cod. IV.32. on rubric *de usuris*, fol. 82^{r}; cf. also on law 1. of the same title, fol. 83^{r}.

[69] Cod. IV.32.2, fol. 83^{r}.

[70] *Ibid.:* Secundae usurae similiter sunt permissae usque ad congruum et honestum modum prout mos regionis expostulat quia potius recipiuntur loco permutationis quam loco poenae. . . . Sunt enim hujusmodi usurae onerosae, non gratuitae, et fundantur in ratione naturali aequitate quae est quod quis non locupletur cum aliena jactura.

[71] *Ibid.*

[72] *Ibid.:* Interesse enim est licitum quocumque nomine nuncupatur, tam in damno quam in lucro. This he reports is also the opinion of others: usura punitoria quae est ex mora dicunt Pe(trus) et Ni(colaus) de Ma(relis) quod etiam jure divino permittitur.

[73] *Ibid.:* Sed quare poena est licita super interesse, secus in usura? Respondeo quia in usura constat de intentione quod intendat esse usurarius.

[74] *Summa*, Cod. IV.32.18, fol. 110^{r}. Among the numerous works which should be consulted on the subject of usury in the law of Justinian mention might be made of G. Cassimatis, *Les intérêts dans la législation de Justinien et dans le droit byzantin* (Paris, 1931).

[75] Gloss on Auth. *ad haec*, col. 960: Sed jure novo secundum Jo(annem) et Az(onem) et nos, non solum in rusticis et non solum in minorandis usuris vel accessionibus sed ex toto tolluntur usurae ut in Auth. de ecclesiasticis titulis . . . ubi dicit servandas regulas sanctorum quattuor conciliorum, sunt enim prohibitae in Nicaeno. Accursius, author of the Grand Gloss to the *Corpus Juris Civilis*, and pupil of Azzo, was born in 1184 or 1185 and died in 1263. See Savigny, *op. cit.*, V, 262 ff.

[76] Cynus, Cod. IV.32.24. Cf. p. 89, note 53.

[77] *Id.* on Auth. *ad haec*. Cf. p. 89, note 52.

ished. But the same author frankly admits that the *leges* do permit the usury to be stipulated when the *mutuum* is made.[78]

Others teach that, for reasons which we shall see later, the Emperor did permit usury to be taken. Cinus tells us that this is the opinion of many modern doctors and it appears to be his own.[79] The fact that Justinian approved the four general councils is no reason for concluding that he abrogated what had been set down in the title *de usuris*. He approved what these councils had decided concerning the faith to be held but not what they had enacted in their disciplinary canons. Moreover, after the title *de ecclesiasticis titulis* in which these councils are accepted, is to be found another title *de usuris nauticis* wherein usury is permitted.[80] However, in answer to the precise question whether the Civil Law today allows usury to be taken, Cinus hesitates.[81]

Bartolus argues in the same way that usury is permitted by the Civil Law, not only on account of delayed payment,[82] but generally.[83] He relates the two opinions, one holding that the laws on usury have been modified, the other that only the faith and doctrine of the councils have been confirmed by the *leges*.[84] He agrees with other jurists that by will and intention the Civil Law allows usury.[85]

The doctrine of Baldus will be given more fully in the following section. In fact, he says, the *jus humanum* does permit usury[86] as the title *de usuris* of both the Code and Digest indicates.[87] The first law of the Code prescribes merely the Catholic faith in the dogma of the Trinity and does not refer to other points of doctrine which are necessary for salvation.[88] Consequently the remainder of the Code has not been corrected. Besides, the Authenticum *ad haec* permits a moderate rate of usury to be stipulated in a loan.[89]

D. *Can the Civil Law permit usury?*

A CONTRADICTION exists then between the divine and Canon Law on the one hand and the Civil Law on the other.[90] How reconcile this contradiction? The question resolves itself into a part of a much greater one: Can the Civil Law legislate against the divine law and the canons? What force has a civil law which is thus opposed to divine and canon law? Here we will study only the question of usury where the principles are applied to a particular case.[91]

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[78] *Id.* on Auth. *ad haec*, Cf. p. 89, note 54.

[79] *Ibid.*

[80] *Ibid.*: Verum est (quod Justinianus approbaverit quattuor concilia) quantum ad fidem . . . non quantum ad usuras omnino prohibendas, quod patet quia . . . approbat concilia praedicta et hoc concedit. Praeterea post titulum *de eccl. titulis*, ubi approbavit dicta concilia, posuit tractatum *de nautico foenere*. It is to be noted that the Novella *de eccl. titulis* of the year 545 is number 131 and the *de usuris nauticis* of 540 is 106 in modern collections. But in the collection of the Authentics the first is Auth. 119, coll. IX, tit. 6, and the second is Auth. 129, coll. IX, tit. 11, so that Cinus is led to believe that the law permitting usury on sea-loans is posterior to the approbation of the four councils.

[81] *Id.* on Cod. IV.32.2: Sed cum hodie jure canonico et *forte* jure nostro usurae sunt reprobatae in totum.

[82] Cod. IV.32.2, Vol. VII, fol. 148^{r}.

[83] *Id.* Auth. *ad haec*, Vol. VII, fol. 149^{v}:, tamen vere non possumus negare quin usurae de jure civili sint permissae. . . . Veritas est ista quod de voluntate juris civilis fuit quod etiam usurae possint exigi. He adds also following Cinus that the title *de usuris nauticis* is more recent than the decree concerning the four councils.

[84] Cod. I.1.1, Vol. VII, fol. 3^{v}.

[85] *Ibid.*: Dicebat dominus Ja(cobus) Bu(trigarii) (c. 1274–1347), et bene, ut puto, quod de mente et voluntate juris civilis est quod usurae possunt exigi secundum legem *eos*, infra, *de usuris* (IV.32.26), ut patet in c. *Naviganti* (X.V.19.c.19), et § *sin autem* in Auth. *de eccl. tit.* (Novella 131, chap. 12, n. 1).

[86] Cod. IV.32.1, fol. 83^{r}.

[87] Cod. IV.32. on rubric *de usuris*, fol. 82^{r}: Usurae . . . tamen jure romano sunt certo modo concessae ut per totum hunc titulum tam in Cod. quam in Dig.

[88] Cod. I.1.1, fol. 4^{v}: Nam ipse dicit quod vult servari fidem et tamen ipse non servat nam permittit usuras quae sunt contra fidem. Solutio: hic loquitur de fide catholica respectu trinitatis, non respectu aliorum capitulorum quae requiruntur ad salutem animae.

[89] Cod. Auth. *ad haec*, fol. 84^{v}.

[90] Joannes Andreae says: Legistae fatentur usuras illicitas, sed negant eas jure civili prohibitas. Cf. Additions to Durand's *Speculum juris*, Lib. IV, Part. 4, *de usuris*, addit. c, p. 502.

Azzo states briefly and clearly his answer to the question which occupies us here. He first proclaims the principle upon which his answer is based. A civil law opposed to the law of God, of the Apostles, of the Evangelists or of the Prophets is to be rejected since an inferior cannot abrogate the laws of his superior. But, and here Azzo introduces an extremely important qualification, an inferior may discriminate in the application of the laws of his superior, having regard to persons and the public needs.[92] Now he proceeds to apply this principle to the question of usury. The law of God contained in the Old and New Testaments forbids all usurious contracts. The *lex humana*, however, on account of the necessities and difficulties in the world could not forbid them absolutely but was only able to reduce them as far as possible.[93] He then goes on to say that the law is without force because the divine law is superior and also because it has since been modified by the approbation given to the council of Nicaea.[94]

Accursius, after concluding that the original laws on usury have been modified by the acceptation of Nicaea, adds that even without such a measure the disposition of the Civil Law would have no force because it is opposed to the divine law whose author is above the secular legislator.[95]

We find in the commentary of Cinus little more than a report of the opinions held by others on this question. In one passage he says that it would seem that usury may be permitted by the Emperor in the same way that he decreed that five or seven witnesses are required whereas the law of God declared that two or three suffice.[96] Some authors, he relates, hold that the Emperor permits usury in a certain manner which assures equity, because a law considered under one aspect may be equitable but under another iniquitous. Now equity results usually, though not always, from the divine prohibition against usury. But the Emperor who has to govern the earth sees that men are not as charitable as they ought to be, with the result that the poor perish from hunger and thirst. In view of such conditions he judges it more equitable to allow usury to be demanded.[97] This opinion which he seems to adopt as his own, Cinus says is followed by many even of his time. The prohibition which is contained in the divine law is no objection to it because it must be interpreted by the *lex humana* which permits a lesser evil that a greater may be avoided.[98]

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[91] For the main problem cf. A. J. Carlyle, "The Political Theory of the Roman Lawyers and Canonists" in *A History of Mediaeval Political Theory in the West*, Vol. II (London, 1909), p. 78 ff. and p. 227 ff.

[92] *Summa*, Cod. I.22.6, fol. 9^v: Sciendum est autem quod si rescriptum vel privilegium contra jus Dei, apostolorum, evangelistarum, prophetarum indulgeatur, omnino respuitur, quia superioris leges tollere non potest, cum alias sit proditum, quod par pari imperare non potest. Licet autem non tollat, distinguere tamen potest pro qualitate personarum, et publica utilitate. Nam et Apostolus ait: *Omnis anima subdita sit regi tamquam praecellenti et ducibus ab eo missis.*

[93] *Id.* Cod. IV.32.18, fol. 110^r: Et hoc de jure humano. Nam propter necessitates et angustias Imperator ex toto non potuit cassare obligationem usurarum sed tamen minuit.

[94] *Ibid.:* Lege autem Dei, quae veteri ac novo testamento continetur, omnes usurarum obligationes prohibitae sunt et execratae. Nihil ergo valet quod sequitur ex eo vel ob id ut supra . . . (Cod. I.14.5), cum et Imperator dicat sacros canones pro legibus observandis ut in Auth. . . . (Nov. 83, chap. 1), et . . . (Nov. 6, chap. 1, n. 8). Certum est siquidem quod lex minoris non derogat legi superioris, nam nedum superiori, sed etiam pari quis imperare non valet. . . . Quomodo ergo servus abolebit legem domini sui. Certe hoc durum esset et contra naturam. Unde et Paulo apostolo dictum est: *Durum est tibi contra stimulum calcitrare.*

[95] Cod. Auth. *ad haec*, col. 960: Item si nulla lex diceret, adhuc non valeret cum sit contra legem Dei et inferior non potest tollere legem superioris. . . . Item Christus ad Paulum dixit: *Durum est tibi contra stimulum calcitrare.*

[96] Cod. Auth. *ad haec:* Econtra videtur quod permittatur (usura) nam lex Dei dicit quod: *in ore duorum vel trium constat omne verbum* et tunc Imperator statuit quod quandoque septem, quandoque quinque, testes requiruntur. Ergo, etc.

[97] *Ibid.:* Alii dicunt quod imperatores concedunt usuras quodam respectu unde resultat aequum nam jura quandoque una consideratione sunt iniqua et alia consideratione sunt aequa. . . . Cum enim jus divinum prohibet usuras aequum fuit regulariter jure illo. Sed Imperator qui habet populum et mundum regere vidit quod homines non sunt ita caritativi ut deberent, unde pauperes esuriebant et fame periebant. Et ideo reputabat aequum eas posse deberi et peti.

Bartolus states that the Emperor willed to permit usury, but it was not within his power to do so against the will of his superior, the divine legislator. Hence his laws must give way to the law of God.[99] Why then did the Catholic Emperor permit usury? The Gloss which we have already seen on the Decretum says that it was to prevent greater evils. Bartolus points out that according to Saint Augustine[100] such a reason does not excuse him from sin, and so we must conclude that usury is never to be exacted as such.[101] In another place he attempts to justify the action of the Emperor, who, he says, is not a heretic but permitted usury in the same way as Moses, on account of the hardness of their hearts, permitted the Jews to practice divorce which had been forbidden by divine law from the beginning of the world.[102] From other passages of his writings it is clear that Bartolus admits that the prescriptions of the canons must prevail over those of the laws on this point.[103]

The most complete treatment of the obligation of the civil laws which permit usury is furnished by Baldus. Usury, he says, which is forbidden by the divine law cannot be allowed by the *lex humana* because where there is not power there can be no act. The secular legislator does not possess the power to decree anything against the divine law and the act which he places in attempting to do so simply does not exist.[104] The divine law will prevail over the Civil Law in both the ecclesiastical and secular courts because the first cause is stronger than any secondary ones and this is especially true in our case where the first cause is God Himself.[105] The prohibition against usury is the same in both forums because it is based on the natural law and, quoting Aristotle, he says that what is natural is the same everywhere as fire ascends and burns and stones descend wherever they may be.[106] Also, he adds, the Emperor is the servant of God and the servant must not overrule the law of his master. Though he had the will to permit usury he had not the power to do so. Besides in one of the Authentics Justinian declared that the civil laws do not disdain to imitate the divine laws and canons and consequently these may be invoked in court like any other laws found in the *Corpus Juris Civilis*.[107]

Nicolaus Matarellus[108] claims that the divine law may be interpreted and distinguished by the civil law. For example, the former prohibits homicide but the latter permits it sometimes. Also the law of God forbids retaining what belongs to another but this is occasionally modified by the civil law. In the same manner the Authentic *ad haec* distinguishes and modifies the divine law and on account of the common good allows creditors to charge a moderate rate of usury in order that they may be induced to lend to the poor. By forbidding a high rate the same law prevents men from suffering from too great a desire for gain on the part of others from whom they are compelled to borrow.[109]

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[98] Cod. Auth. *ad haec:* Et istud sequuntur plures moderni. Non objicitur quod lex divina dicit quia, sicut dixi, distinguitur lex divina per humanam et conceditur unum ut magis iniquum evitetur.

[99] Cod. Auth. *ad haec*. Vol. VII, fol. 149^v: Unde de voluntate sua fuit, tamen de potestate non . . . quia non potuit Imperator tollere legem majoris; Cod. I.1.1, Vol. VII, fol. 3^v. Cf. p. 91, note 85.

[100] C.33.q.2.c.9.

[101] Cod. I.1.1, Vol. VII, fol. 3^v.

[102] Cod. Auth. *ad haec*, Vol. VII, fol. 149^v.

[103] Auth. *de eccl. titulis* (Nov. 131, preface), Vol. IX, fol. 52^v; Auth. *de usuris nauticis* (Nov. 106, preface), fol. 54^v; Digest. XII, 6, f. 26, Vol. II, fol. 49^r; *Consilium* CXXVIII, Vol. X, fol. 32^r.

[104] Cod. IV.32.2, fol. 83^r: Nota quod usurae quae de jure divino prohibentur nec humano concedi possunt, quia a quo removetur potentia, removetur actus; sed a statuentibus removetur potentia, ergo et actus constitutio removetur.

[105] Cod. IV.32. on rubric *de usuris*, fol. 82^r: Vincit tamen jus divinum in utroque foro quia prima causa est potentior omni causa secunda. Cf. also on 1.2, fol. 83^r: Usurae sunt prohibitae de jure divino, ergo non possunt peti in aliquo foro quia jus divinum in omni foro suam vim exercet.

[106] Cod. I.1.1, fol. 4^v.

[107] Cod. Auth. *ad haec*, fol. 84^v.

[108] Also called Nicolaus de Marelis, civilian of the early part of the fourteenth century. Savigny, *op. cit.*, V, 430 ff.

This opinion Baldus brands as false and condemned by all the canons. What is forbidden by divine decree cannot be permitted by human reason because such reason is not reason but abuse, since it does not conform itself to the divine will. No reason can be found which will render acceptable to God what He has prohibited. Any laws which attempt to do so are iniquitous and Baldus quotes the decree of Clement V ordering such laws to be deleted from the collections of statutes and threatening with excommunication those who judge according to them.[110]

The same jurist thinks that in permitting usury the Civil Law aimed at establishing a sort of equity in that both parties stand to lose or gain in a loan at usury. The creditor may lose the capital itself. Also if usury were forbidden the debtors might die of want because men are unwilling to lend without usury. So, it seems, on account of the common good the Civil Law permitted usury.[111] But, asks Baldus, may the Emperor on account of the public good permit what is opposed to salvation? His answer is an emphatic negative. An inferior may not allow what his superior forbids. Even the Pope cannot decree anything opposed to the law of the Gospel.[112]

Was the Emperor a heretic in permitting usury? No, because he did not act as one erring in the faith but on account of the public good, a motive which he thought justified his act. We know from experience that it is often expedient to be able to find someone to lend at usury since charity is so completely lacking that men will not lend gratuitously.[113] Is he at least an abettor of heresy? He would seem to be such because by permitting usury he leads others who lend money to believe that their practice is not sinful. Now Clement V declared in the council of Vienne that such a belief is heretical. Baldus answers the question in the negative. The Emperor is not an abettor of heresy because he acted on account of the public good knowing that usury was sinful. He believed as did the Church concerning usury but he acted as does a murderer who commits his crime but does not pretend that it is not sinful. The latter is in no way heretical and neither can the Emperor be considered a heretic nor an abettor of heresy.[114]

We shall refer to the teaching of the civilians again when we discuss the doctrine of extrinsic titles in the receiving of usury. From what has already been seen the general teaching of the legists is that originally the Civil Law did permit usury to be taken on loans. As to whether that permission still remains, they are divided. But regardless of what answer they give to that question they admit usually that the Civil Law may not oppose the divine law and the canons. The same prohibition, they say, exists in both forums. Consequently where the Canon Law forbids anything to be received in excess of the principal the Civil Law must also be understood to forbid it; where the Canon Law allows such excess to be exacted the Civil Law may also permit it. In what cases does the Canon Law allow usury or permit something to be received above the capital? What are the reasons for this permission? These questions will be dealt with in the third section and then further attention will be given to the civilians.

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[109] Cod. Auth. *ad haec*, fol. 85^{r}: Item quia in materia usurarum ut creditores mediocriter solatium percipiant et ad subsidia pauperum inducantur, et homines propter importabilem reditorum avaritiam non graventur. Et sic propter commune bonum lex divina distinguitur et modificatur per istam authenticam.

[110] *Ibid.*

[111] Cod. IV.32.2, fol. 83^{r}.

[112] Cod. I.1.1, fol. 4^{v}: Respondetur quod non potest permittere quia id quod est contra salutem animae non potest permittere propter bonum publicum quia inferior non potest permittere illud quod vetat superior, id est ipse Deus, nam et Papa non potest contra dispositionem evangelii.

[113] *Ibid.*

[114] *Ibid.*

II. THE NATURE OF USURY

THE texts contained in the Decretum of Gratian and originating as we have seen in the early centuries, condemn as usury the receiving of more than the sum lent, not only of money but of anything in kind, wheat, wine or oil.[115] Any excess demanded, though it be a small gift, is usury.[116] To receive an emolument in the form of merchandise from a merchant to whom money has been loaned comes under the same condemnation.[117] A more general statement says that whatever is added to the capital, no matter by what name it is called, "quodcumque sorti accidit, et quodcumque velis ei nomen imponas"; [118] whenever more is required than was given, "ubi amplius requiritur quam quod datur," then we have usury.[119]

Alongside of these texts we find another series condemning love of gain in clerics and the canons punish by deposition those who loan for usury, who buy with the intention of selling at a higher price, who engage in any business for gain or who in any contract receive more than they give. Such *turpe lucrum* is reprehensible.[120] A canon which is not restricted especially to clerics calls *turpe lucrum* the practice of buying goods to sell later at an increased price.[121] Still another condemns this *turpe lucrum*, the love of gain, not only in clerics but in laymen and then proceeds to forbid all to practice lending at usury.[122]

The grouping together of these texts is indicative of the matters which we are going to find treated by the canonists in the section *de usuris*. Leaving aside the question of clerics and secular occupations there is a condemnation of three different things: (1) The taking of usury in the strict sense, receiving more in a loan than what was lent, whether in money or in kind. (2) Other contracts which are not loans but where something more than was given is received. These are the other cases where the usury is hidden under another name and even the loan itself is disguised. When the loan at usury is condemned men find ways of circumventing it by simulated contracts. These acts are performed, as they say, *in fraudem usurarum*, in order to avoid the prohibition against usury. The definition, *quidquid sorti accidit, quodcumque velis ei nomen imponas usura est* gave to the word usury a much broader sense than it had originally. Both of these definitions or meanings of usury are to be found in all the canonists though often they do not clearly distinguish them. (3) Finally, there is the question of dishonest gain, *turpe lucrum*, buying at a low figure to sell at a profit. This will be merely touched upon.

These three problems will be treated successively: usury in the strict sense; contracts *in fraudem usurarum; turpe lucrum*. We shall, however, note first the general teaching of the earliest commentators on the Decretum before examining the much richer commentaries of the thirteenth and fourteenth centuries, made possible by the development of the science of Canon Law and the numerous new texts to be found in the Decretals.

Gratian himself, who has done little more than summarize the canons, found little contradiction and so adds little by way of doctrine. Whatever exceeds the capital is usury and he does not say whether this is only in a loan or not. It would seem that it is true for any contract.[123] Paucapalea with his usual brevity seems to consider usury only in the strict sense. It is what exceeds the capital in a loan, a

[115] C.14.q.3.c.1.

[116] *Id.* c. 2.

[117] *Id.* c. 3.

[118] *Ibid.*

[119] *Id.* c. 4.

[120] C.14.q.4.c.1–7.

[121] *Id.* c. 9.

[122] *Id.* c. 8.

[123] *Ibid.* and q. 3. dictum post c. 4.

mutuum, in which contract what is the lender's becomes the borrower's. A certain quantity of something is loaned and the same quantity of the same kind is to be repaid.[124] Rolandus says usury is to exact something above the sum lent.[125] Rufinus clearly distinguishes two things contained in these canons of Gratian. There is usury and there is illicit gain, the first arising from a loan, the second from buying and selling. To make profit from a loan is usury and whatever is above the capital, no matter what form it takes, is usury.[126] In buying and selling, the intention which is present may make such practice illicit but Rufinus does not call it usury.[127] Trading may be honest or dishonest. It will be dishonest to buy grain at harvest time in order to sell it for a higher price in time of famine.[128] Such is not called usury but dishonest gain, *turpe lucrum*. Stephen of Tournai refers to those things which are done *in fraudem usurarum*, to escape the name of usury. However, he has not in view those contracts which we later find treated as fraudulent, but rather cases of a strict loan where some gift is demanded or some service or anything else which makes the loan profitable to the creditor.[129]

The much more ample teaching of Huguccio's *Summa* on the Decretum will be noted in studying the various points of the synthesis of the great canonists in their commentaries on the Decretals of Gregory IX. Before doing so it is interesting, because of its date, to note the exposition of Bernard of Pavia on the nature of usury. It is clear and brings out the division which has been noted above without following the plan of the Decretals. The *Summa Decretalium*, written between 1191 and 1198, though expounding the law of the Decretum, follows the plan of the *Compilatio Prima* which he had composed between 1187 and 1191. This collection contained in its title *de usuris* the first ten texts of the same title in the official compilation of Gregory IX, in other words all the important texts of Alexander III and the one of Urban III.[130] In addition it contained two more letters of Alexander III addressed to English bishops and omitted by Raymund of Penafort, commissioned to compile the decretals for Gregory IX.[131]

Bernard gives us first his definition of usury and it is the restricted definition. Usury, he says, is gain owed or exacted by agreement in a loan. Such a loan may be of money or of kind.[132] There is also, he continues, no usury more plain than that which he calls *superabundantia*, that is, when something more than the loan is demanded but in another kind. Such is when the lender retains the fruits of a pledge which has been placed in his hands when the loan was made and refuses to deduct them from the loan.[133] In both of these cases there has been a *mutuum* and we are dealing with usury in the strict sense.

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[124] *Summa* on C.14.q.3.c.1, ed. Schulte, p. 83: Mutuum ex eo dictum quia quod sit meum fiat tuum. Est autem mutuum quod in quantitate consistens a me proficiscitur a te ejusdem generis recepturo tantundem. The *Summa* of Paucapalea, disciple of Gratian, was written shortly after the Decretum itself, between 1140 and 1150. See Schulte, *Geschichte*, I, 109 ff. and the introduction to the same author's edition of the work.

[125] *Summa* on C.14.q.3, ed. Thaner, p. 29. Rolandus Bandinelli seems to have composed his *Summa* or *Stroma* before 1150 when we find him designated as cardinal. He became Pope Alexander III in 1159 and died in 1181. See Schulte, *op. cit.*, I, 114 ff.

[126] *Summa* on C.14.q.3, ed. Singer, p. 341.

[127] *Ibid.:* Si ergo aliquis ex empto sibi acquirit lucrum, si non faciat hoc ementis intentio, sed dumtaxat necessitas vel non improbande utilitatis eventus, non erit iste questus laicis vel clericis turpis aut illicitus.

[128] *Ibid.*

[129] *Summa*, D.47.c.2 *aliqua ad inventionem*, ed. Schulte, p. 67: Sicut in fructibus vel aliis, quae in fraudem usurarum a quibusdam suscipiuntur. Quicquid enim datur intuitu pecuniae mutuo susceptae quod alias non daretur, usura est.

[130] I Comp. V.15.c.1–5; 8–12, ed. Friedberg, *Quinque Compilationes antiquae* (Leipzig, 1882), p. 59.

[131] *Id.* c. 6 and 7.

[132] *Summa*, V.15.n.1, ed. Laspeyres, p. 233: Usura est lucrum pacto debitum vel exactum. . . . Constant ergo quod usura tam in speciebus quam in denariis fieri potest.

[133] *Id.* n. 3, p. 234: Superabundantia vero dicitur quod in alia specie plus requiritur quam datum sit, v.g. mutuasti decem et

The author then deals with *turpe lucrum* which according to him is not usury but results from a certain dishonesty, *improbitas*.[134] Gain, he says, may be made in many ways. (1) *Ex commodato*, for example I lend you a horse to go from Bologna to Piacenza and charge you ten pounds. (2) *Ex locato*, if I rent you a house for a hundred pounds a year. (3) *Ex artificio*, when I buy paper and write a book selling it for more than it cost. These three kinds of gain are honest and lawful.[135] (4) *Ex mutuo*, if the borrower freely offers a gift out of gratitude the gain is licit but if from agreement or actual exaction something is received the profit is usury in the strict sense and is condemned.[136] Finally, gain may be made *ex negotiatura*. It will be honest if I buy grain in Alexandria and sell it at a higher price after transporting it to Bologna. It will be dishonest if I buy grain in Bologna at a low price intending to store it until the price has gone up. Bernard adds, however, that the first kind of commerce, though honest, is forbidden to clerics. If they are in need they may buy at a low price and sell at a higher one *ex artificio*, on account of the work they have expended upon the thing. Let them, he says, write books or raise chickens.[137]

In all of these forms of gain it is to be noticed that Bernard considers as usury only that which is exacted on a loan. The other forms of dishonest gain do not constitute usury. A bit later he returns to the question and then exposes usury in the wider sense indicated. It remains, he says, to treat of those things which are done *in fraudem usurarum*. Many people, avoiding the name of usury, but not the gain, find various ways of excusing themselves from sin, and impose other names upon the usury which they receive, calling it a gift, a penalty, a profit from business and so on. Now whatever exceeds the capital is usury no matter by what name it be called.[138]

Under the name of business there may be three usurious contracts. If I lend you ten pounds and a poor horse worth five pounds for six months and demand twenty pounds, this contract is made to avoid the name of usury unless the horse were really worth more than what has been added to the sum loaned. Again, if I sell goods worth twenty pounds for thirty pounds to be paid at a certain date, I am guilty of usury unless there is doubt as to the approximate value of the goods then. Also if I buy and pay now for grain to be delivered at harvest time and the current price which I pay is much lower than that which will then be current, this contract may be usurious. It is not usurious unless the price which I pay is much below the price which the grain usually brings at harvest time in which case I am sure to gain.[139]

Though a real gift which is made for a loan is in no case usury, however if it be really extorted from the debtor, and the creditor would not otherwise have granted the loan, the contract is a usurious one and the lender is guilty of usury. This, however, can only be decided in the confessional since it depends on the intention.[140]

The attaching of a penalty for the late payment of a loan may also be done *in fraudem usurarum*. It is presumed to be such when under another name the same re-

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subjectus est tibi ager loco pignoris et sub usu pignoris ut vulgariter loquimur vel nomine cautionis, id est ut provenientes fructus inde percipias praeter sortem; hoc suprabundantia dici potest ut C.14.q.3.c.2. Sed certe nulla manifestior usura ut C.14.q.3.c.2 et 3.

[134] *Id.* n. 4, p. 234: Turpe vero lucrum dicitur quod quidem non est usura sed fit cum quadam improbitate v.g. emis vile ut serves et carius vendas.

[135] *Ibid.*

[136] *Ibid.:* Ex mutuo fit lucrum aliud paciscendo vel extorquendo, et tunc in usurae nomen et vitium cadit; aliud gratis a debitore offertur et tunc donum appellatur, quod, ut dixi, non arbitror reprehendendum.

[137] *Ibid.*

[138] *Id.* n. 7, p. 236: Restat agere de his quae fiunt in fraudem usurarum. Sciendum est igitur quod usurae nomen, non lucrum, plerique vitantes, varias formas inveniunt ad excusationes in peccatis, contractui in fraudem usurarum facto nomen negotiationis, doni vel poenae vel aliud imponentes.

[139] *Ibid.*

[140] *Id.* n. 8, p. 237.

sult is obtained. Bernard says the Bolognese money lenders are guilty of usury in this way. In their loans to the ultramontane students they say that if the debt is not paid by the next market day the students must pay one per cent per mark and this is extended from market day to market day. The penalty which is to be so much per month per mark according to the delay of payment after the date fixed is of the same kind. These are fraudulent methods of exacting usury.[141]

Bernard of Pavia has here given us a brief, concise, systematic treatment of usury making use of the letters of Alexander III and the texts of the Decretum. We will now see the synthesis of the great canonists of the following period who had all the texts on the subject before them as well as new methods of the practice to evade the condemnation of usury.

A. *Usury*

USURA, we are told, is derived *ab usu aera*, *usu aeris*, *usuera*, *usueri*, *usurea* or *usu rei*. *Aes* means *pecunia* and this latter signifies not only money but any kind of goods which man possesses.[142] What are the species of usury? All the canonists say that there are two kinds, spiritual and corporal. The first is laudable and just and is based on the divine promise that our good works will be rewarded a hundredfold.[143] The *usura corporalis*, which alone concerns us here, is subdivided into two kinds, corresponding to our simple and compound interest. They are designated by the authors as *usura prima vel simplex* and *usura secunda vel duplex*,[144] or *usura sortis* and *usura usurarum*,[145] or *foenus sortis* and *foenus foenoris*.[146] Compound interest is called by all *improbum foenus* and, referring to its prohibition by the Roman Law, they simply state that it is prohibited and concern themselves only with the first kind.[147]

They then give us a definition of usury in the strict sense, attached to a *mutuum*. Usury is gain owed or exacted from a contract of loan.[148] Others say that it is what is added to the capital in virtue of a preceding agreement or intention.[149] Hostiensis combines these into a more comprehensive definition. *Usura* is whatever is in excess of the capital for the use of the thing lent when either there is an agreement or this intention present or even that which without either agreement or intention is exacted from the borrower.[150] A number of elements in this definition must be examined more closely, recalling again that in this section usury in the strict sense, resulting from a *mutuum* is being studied.

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[141] *Id.* n. 9, p. 238: Si vero exigatur poena conventionalis in fraudem usurarum apposita, incidit in crimen usurarum. . . . Praesumitur autem in fraudem usurarum apponi, cum nomine mutato instar sequitur usurarum ut, etc.

[142] *Id.* n. 1, p. 233; Raymund, *Summa*, II.7.n.1, p. 206; Hostiensis, *Summa, de usuris*, n. 2, fol. 372ʳ.

[143] Bohic, *Commentaria* on X.V.19.c.6, p. 173, is inclined to reject this division following John of Freiburg, a Dominican, who wrote a widely used *Summa Confessorum* between 1280 and 1298 (cf.Schulte, *op. cit.*, II, 419 ff.): Istam distinctionem videtur reprobare frater Joannes in Summa Confessorum, eodem titulo, q. XIV, quot sunt species, et forte bene, quia figurative et parabolice tantum lucrum operum bonorum dicitur usura, sicut fatuum est dicere quod duae essent species vitis, scilicet spiritualis et corporalis, quia Christus dicit, "*Ego sum vitis vera.*"

[144] Bernard of Pavia, *Summa*, V.15.n.6, p. 236.

[145] Raymund, *Summa*, II.7.n.2, p. 206; Bohic, *Commentaria* on X.V.19.c.6, p. 173.

[146] Hostiensis, *Summa, de usuris*, n. 3, fol. 372ʳ.

[147] For the prohibition of compound interest in Roman Law see Dig. XII.6.26.n.1; Dig. XLII.1.27; Cod. IV.32. 28. Cf. G. Cassimatis, *Les intérêts dans la législation de Justinien* (Paris, 1931), p. 61 ff., and P. F. Girard, *Manuel élémentaire de droit Romain* (6th ed. Paris, 1918), p. 527.

[148] Innocent IV, *Commentaria* on X.V.19.c.1. *plures:* Usura est lucrum mutuo pacto debitum vel exactum. The same words are used by Raymund, *Summa*, II.7.n.1, p. 205, and Bohic on X.V.19.c.6; Panormitanus, *Consilia*, nº. CXIV, Vol. VIII, pars 2, p. 381: Usura non committitur nisi in contractu mutui; *Id.* nº XV, Vol. VIII, pars 1, p. 23: Ex contractu vero locationis non oritur usura, sed tantum ex puro contractu mutui.

[149] Bohic on X.V.19.c.6, p. 172: Sed Goff(redus) in Summa dicit, et melius, quod usura est quicquid sorti accedit intentione praecedente vel pacto.

[150] *Summa, de usuris*, n. 1, fol. 372ʳ: Quodcumque solutioni rei mutuatae accedit ipsius rei usus gratia pactione interposita, vel hac intentione habita in contractu, vel exactione habita post facto.

The quantity or nature of what is received on account of the loan makes no difference. Whatever is demanded *ultra sortem*, whether money or fruit or wine or anything else is usury.[151] It does not admit of parvity of matter.[152] A text of the Decretals condemning immoderate usury was the occasion for the canonists' asking whether a moderate rate of usury could be allowed. The text, a canon of the Fourth Lateran Council of 1215, condemns the Jews who extort from Christians *graves et immoderatas usuras* and threatens them with certain sanctions until they have given satisfaction for their *immoderato gravamine*.[153]

According to this text, remarks Bernard of Parma, moderate usury appears to be permitted. This is false, however, and the argument *a sensu contrario* has no force here.[154] Hostiensis says that the council means that immoderate usury is especially condemned but that this means even a low rate of usury because all usury is burdensome and immoderate. The terminology of this letter could have been used formerly when Roman Law distinguished a legal rate of usury and an immoderate rate, but this distinction no longer holds.[155] Bohic simply repeats what these two canonists have written.[156] Panormitanus is of the same opinion teaching that the argument *a sensu contrario* is always to be rejected when it opposes the meaning of the text and when it is formally contradicted by other texts as is the case here.[157]

If the canonists are content with their answers, some other texts outside the collections of Canon Law do not diminish the difficulty. A letter of Alexander III addressed in 1163 to the Archbishop of Rheims refers to a certain creditor who forces his debtor *ad immoderatum foenus solvendum*. The latter has already paid in usury almost twice the amount of the loan and his creditor is demanding still more. The prelate is to examine the affair and if it is as stated then the debtor is to be no longer troubled by such exactions.[158] Here the *immoderatum* certainly refers to an excessive rate and this is condemned without speaking of a moderate rate.

A provincial council held at Narbonne in 1227 enacted a prescription concerning the usurious exactions of the Jews, a prescription, doubtless, in part at least, inspired by that of the Lateran Council of 1215, and repeated verbatim by another Council of Béziers in 1246.[159] The canon provides: "ne judaei a christianis immoderatas usuras accipiant."

The repetition of the word, immoderate, in all these texts does not, it seems, include all usury. These canons appear to be condemning the abusive rate of usury which the Jews are demanding. It may be true to say that the Church is tolerating a moderate rate to be charged by the Jews. Unable to abolish all usury even in the case of Christians, she is going to be content to allow the Jews to exact a moderate amount of usury. The answer to this difficulty will be found rather in a study of the problem of the Jews as money lenders in the Middle Ages, a problem which is here left aside.

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[151] *Summa, de usuris*, n. 1, fol. 372ʳ: Quodcumque ideo dicitur quia, sive sit pecunia, sive spes fructus, sive electuarium, vel cupella vini, et postremo quodcumque nomen imponas, ex quo ultra sortem exigis, usura est.

[152] Gloss on X.V.19.c.19. *naviganti*.

[153] X.V.19.c.18.

[154] Gloss on X.V.19.c.18. *immoderatos:* Ergo moderatus videtur permittere a contrario sensu . . . quod non est verum, *supra*, *eodem*, c. *post miserabilem* (c. 12, which without distinction orders the Jews to restore all usury received), et ita cessat hic argumentum a contrario sensu.

[155] Commentaria on X.V.19.c.18. *immoderatos:* maxime, idem enim est de minimis. Omnes enim sunt immoderatae et graves, ideo et reprobatae . . . et sic vacat hic argumentum a contrario sensu; *immoderato:* alias etiam de minimo. Sed ideo hoc dicit quia hodie quaelibet usura censetur immoderata et gravis.

[156] *Commentaria* on same canon, p. 176.

[157] *Commentaria* on same canon, Vol. VII, fol. 245ᵛ.

[158] Jaffé, 10820 (P. L. 200, 196).

[159] Narbonne, can. 2; Béziers, can. 38 (Mansi, 23, c. 21 and 701).

Usury is paid only on a loan, on a *mutuum*.[160] Hostiensis tells us that this is the opinion of almost all teachers,[161] but modifies it by adding the word *regulariter*. Usually usury is only in loans but he extends it to include certain cases where he says the Civil Law permits usury to be paid though there is no contract of loan.[162] He is followed by Bohic on this point.[163]

In a *mutuum* what is mine becomes yours,[164] and only those things which may be counted, weighed or measured may be the object of a *mutuum*.[165] Money may be counted, gold and silver weighed, grain and wine measured.[166] This quality, as Hostiensis points out, is required in the object of the loan and not in the usury which is paid. To receive a coat, a horse, a field, or anything else which has not one of these three qualities is yet to receive usury.[167]

Why can there not be a *mutuum* in other things? The reason is because in this contract the ownership is transferred and the one who receives the things is not bound to repay the same identical thing which is consumed in use, but the same quantity of a similar kind. This could not be done in things which are not numbered, weighed or measured because it would be impossible to find, for example, a horse of exactly the same value as the one loaned. The certitude of equality of value is possible only in things which possess one of the three qualities indicated.[168]

This conception of the nature of a *mutuum* is held by all the canonists beginning with Paucapalea.[169] They borrowed it from the Roman Law where it is found in the Digest of Justinian in two different passages, being excerpts from the jurisconsults Gaius [170] and Paul.[171] A similar text is to be found in the Institutes and seems to be taken from Gaius.[172] According to these texts the obligation of a *mutuum* consists in those things which can be weighed, numbered or measured, which when lent are not received back but for them are returned things of the same nature and quality. It is called *mutuum* because I give to you what was mine and it becomes yours. The one who borrows incurs the risk of loss and even if the thing is lost by fortuitous chance, fire, shipwreck, invasion or robbery, he remains bound to repay the loan.[173]

But, remark the canonists, one may rent or loan other things which cannot be measured and receive something back in addition to the thing loaned. What is the reason for the difference? The Roman Law here furnished the canonists with names for all these contracts and precise notions as to their nature as well as pointing out the difference between these contracts and a *mutuum*. A thing such as a horse may be given to another to use, to be of service to him. This constitutes a *commodatum*. The borrower is obliged to return the identical thing borrowed. It is not given to him to become his but must be repaid. Moreover, though he must employ care and diligence in protecting the thing, he has not assumed the risk in case of loss and he does not lose if it be destroyed without any fault of his, by a force beyond human resistance, fire, shipwreck, etc. In a *commodatum* no reward may be asked for the use of the thing. Such a contract is of its very nature gratuitous and if something is charged, it at once ceases to be a *commodatum* and becomes a *locatio*, a contract of rent or hire.[174]

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[160] Raymund, *Summa*, II.7.n.1, p. 206: Non dicitur tamen committi usura nisi in his rebus tantum circa quas consistit mutuum; Innocent IV, *Commentaria* on X.V.19.c.1, fol. 213^{r}; Archidiaconus, *Rosarium* on C.14.q.3.c.1. *mutuo*, fol. 239^{v}.

[161] *Summa, de usuris*, n. 1, fol. 372^{r}: Rei mutuatae, ideo dicitur quia in contractu mutui tantum locum habet secundum Gof(fredum) et Ray(mundum) et quasi omnes.

[162] *Ibid.:* Sed tu junge, regulariter. Haec ideo dico quia in casibus auctoritate legis usurae praestantur, licet nullum mutuum sit contractum. . . . Sed regulariter non praestatur nisi in mutuo.

[163] *Commentaria* on X.V.19.c.6, p. 173.

[164] Huguccio, *Summa*, on C.14.q.3. dictum before c. 1, Paris, B. N. Ms *Latin* 3892, fol. 217^{v}, col. 1: Unde dicitur mutuum quod ex meo fit tuum, et mutuare, id est, ex meo tuum facere; Raymund, *Summa*, II.7.n.5, p. 210; Hostiensis, *Summa, de usuris*, n. 1, fol. 372^{r}.

[165] Huguccio, *loc. cit.:* Mutuum enim consistit in his rebus quae pondere, numero vel mensura constant veluti vino, oleo, frumento pecunia numerata, aere, argento, auro, etc.; Innocent IV, *Commentaria* on X.V.19.c.1. *plures;* Gloss on C.14.q.3.c.1. *plusquam.*

[166] Raymund, *Summa*, II.7.n.1, p. 206; Hostiensis, *Summa, de usuris*, n. 1, fol. 372^{r}; Panormitanus, *Commentaria* on rubric to X.V.19.c.1, Vol. VII, fol. 230^{v}.

[167] *Summa, loc. cit.:* Quod ergo scripsit Ray(mundus), non committi usuram nisi in his rebus tantum in quibus consistit mutuum, intelligas quoad contractum. . . . Porro quoad usuram aliud est, nam si tibi mutuo aliquid et tu pro illo mutuo promittas mihi vestem, vel equum, vel praedium aliquid vel aliud quod nec in numero, mensura, vel pondere consistat, usura est.

[168] Panormitanus, *loc. cit.*

[169] *Summa* on C.14.q.3.c.1, ed. Schulte, p. 83. Cf. p. 96, note 124.

[170] Dig. XLIV.7.f.1.n.2 and 4.

[171] Dig. XII.1.f.2.

[172] Inst. III. 14, preface and n. 2.

[173] *Ibid.*

For this reason Laurentius Hispanus says that there are two contracts which of their very nature are gratuitous, the *mutuum* and the *commodatum*. If the first is not gratuitous it becomes at once usurious; if the second is not gratuitous it ceases to be a *commodatum* and becomes a *locatio*, which contract, however, is not usurious.[175] Huguccio has given a long commentary on this point and follows closely the doctrine of the Roman Law as just explained.[176]

Why is it permitted to receive something for the loan of a house or of a horse and not for the loan of money, wheat or wine? The reason for the difference lies in this, that when I rent a house, for example, I retain the ownership and that which I receive in excess of the house is payment for the use of something which is mine, use which I cede to another. It is quite lawful for me to receive something for I cannot be obliged to confer such a favour free of charge. But when I lend money or grain I transfer the ownership to the borrower and consequently I would be acting unjustly if I demanded something for the use of a thing which is no longer mine but belongs to the borrower. Moreover, the use of a thing such as a house is something distinct from its consumption whereas the use of money or wheat is nothing apart from its consumption. Both use and consumption are the same or rather the use is the consumption.[177] To demand something for the use is then a kind of rapine because it is to demand something of a non-existent thing, since the use cannot be separated from the dominium which is consumed in use. Such a thing cannot be used without its dominium being consumed. On the contrary, in a thing which is rented, the use may be separated from the ownership and this latter is not consumed when the thing is used. Hence I do not act against its nature in seeking payment for its use since I retain the ownership and grant you the use.[178]

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[174] Inst. III.14.n.2; cf. also Dig. XLIV.7. f.1.n.3 and 4. For the *locatio*, cf. Dig. XIX. 2 and Inst. III. 23.

[175] Gloss on X.V.19.c.8. *de feudo:* Illud nota quod duo sunt contractus qui de sui natura volunt esse gratuiti, ut mutuum et commodatum. Mutuum enim si non sit gratuitum statim usura est. . . . Item commodatum non sit gratuitum et pecunia recipiatur pro re commodata, desinit esse commodatum et in locationem transire videtur, non tamen est usura. Bartholomew of Brescia has the same teaching on C.14.q.3. dictum ante c. 1, and adds that if in a *commodatum* money is given for the thing itself it becomes a sale, if for the use it is a *locatio*. If something other than money is given for the thing it becomes an exchange and if for the use it is an unnamed contract *do ut des* or *do ut facias*. The revision of the Gloss by Bartholomew was made between the years 1234 and 1258, perhaps before 1245. Cf. Schulte, *op. cit.*, II, 83 ff., G. LeBras, "Bartholomaeus Brixiensis" in *Dict. de droit canonique*, II (Paris, 1935), col. 216–217. Laurentius Hispanus taught in Bologna in the early part of the thirteenth century. Cf. Schulte, *op. cit.*, I, 190 ff., and F. Gillmann, *Des Laurentius Hispanus Apparat zur Compilatio Tertia* (Mainz, 1935).

[176] *Summa* on C.14.q.3. dictum ante c. 1, fol. 217^v, col. 1: Sed commodatum est quod traditur alteri, non ut ejus fiat, sed ad commodum et utendum, unde et idem debet restitui. . . . In mutuo ergo dominium transfertur, sed non in commodato. Item in commodato, idem debet restitui, quod non exigitur in mutuo, licet quandoque sic contingat. Sed in hoc conveniunt mutuum et commodatum quod utrumque debet esse gratuitum. Si ergo pro mutuo aliquid ultra sortem exigatur, quicquid sit, usura est et in hoc solo casu committitur usura, scilicet cum pro mutuo aliquid exigitur vel accipitur ultra sortem. Si vero pro commodato aliquid exigatur, non est usura, sed non est jam commodatum sed alius contractus, scilicet permutatio, vel locatio, vel venditio, etc.

[177] Hostiensis, *Summa*, n. 1, fol. 372^r: Tu dic quod illa est ratio quia rei locatae dominium retinemus, adeo quoad conductor de proprietate quaestionem referre non potest . . . et ideo pro usu rei propriae quam cedimus pecuniam recipimus, quod licitum est, quia nec aliquis cogitur de proprio beneficium facere. . . . Sed rei mutuatae dominium transferimus, ideo pro usu rei propriae debitoris improbe pecuniam exigimus ab eodem. . . . Item usus rei locatae aliquis est sine

Others add another reason why in a *locatio* it is permitted to make a profit whereas in a *mutuum* it is forbidden. It is owing to the difference of person bearing the risk in the two cases. In a *mutuum* the risk belongs to him who borrows, hence it is unbecoming that he be further burdened by the obligation of paying for the use. But in the loan of a horse or of a house the risk is assumed by the lender and so the same reason does not oppose the borrower's paying something for the use which he has enjoyed without incurring the risk of loss.[179]

Hostiensis and Raymund of Penafort reject this line of argument because it may be used to justify a case where canon law says there is usury.[180] For if the reason why remuneration is permitted in a *locatio* and not in a *mutuum* lies in the fact that in the first case the lender assumes the peril of loss, can he not sell the use of money agreeing to accept the risk himself? Such does not seem to be usurious because one may sell the use of what is one's own. Consequently, in this case it is allowed to receive something for the loan of money.[181] This is true if money is loaned for purposes of ostentation as we shall see later, but it is not true otherwise. The use of money may not be sold, the reason being, says Bartholomew of Brescia, because money is not deteriorated in use whereas other things, objects of a *locatio*, are.[182] Raymund of Penafort, basing his argument on a *palea* to be found in the Decretum,[183] holds that such a transaction would be usurious, that money cannot be made the object of a *locatio*, apart from the case where it is used for show. There is a threefold difference between a *mutuum* and a *locatio*. In the former, ownership is transferred, in the latter it is not; money is not deteriorated in use, whereas the object of a *locatio* is; the use of money produces no profit or utility, while the use of a field or of a house does. Now in the case proposed, though the first of these differences does not exist since the lender proposes to retain the ownership and the risk, the other two differences are present. Consequently, concludes Raymund, it is safer to hold that such a transaction is usurious because it is always entered into in order to make a pecuniary profit from the loan and this is illicit.[184]

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consumptione, usus autem rei mutuatae nullus est sine consumptione. Cf. Archidiaconus, *Rosarium*, on C.14.q.3.c.1.n°5, fol. 239^{v}.

[178] Panormitanus, *Commentaria* on rubric to X.V.19, Vol. VII, fol. 230^{v}: Unde in istis rebus exigens aliquid proprie rapit usum quia vult capere aliquid ex usu rei mutuatae et tamen in istis non est dare usum separatum a dominio rei, quia, ut dixi, dominium consumitur ex usu. Sed in aliis rebus secus est, nam si loco tibi domum vel equum, usus rei est separatus a dominio, nec consumitur dominium rei ex usu, et ideo non facio contra naturam rei capiendo aliquid pro usu ipsarum rerum, nam dominium equi vel domus remanet apud me et tu habes usum rei. See the remainder of the long commentary at this place.

[179] Gloss on C.14.q.3.c.1. *plusquam:* Unde res illa statim est periculo illius qui recipit eam. Unde inconveniens esset ut nomine illius rei magis gravaretur. Sed domus et equus non sunt periculo sui. Unde non est inconveniens si alias gravetur pro re tali dando aliquid.

[180] Hostiensis, *Summa, de usuris*, n. 1, fol. 372^{r}: Et est ratio secundum quosdam, quia periculum rei locatae ad locatorem pertinet, sed rei mutuatae ad debitorem. . . . Sed hac ratione considerata, foenus nauticum licitum esset, quod tamen falsum est; Raymund, *Summa*, II.7.n.5, p. 210.

[181] Gloss on C.14.q.3.c.1. *plusquam:* Sed objicitur: Pone quod aliquis vendat usum pecuniae et recipiat in se periculum pecuniae. Talis contractus non est vitiosus quia, cum usus sit illius qui vendidit, licite potest eum vendere. Et sic habes quod aliquis pro pecunia potest recipere pecuniam et aliud in hoc casu, alias non. Raymund, *loc. cit.*

[182] Gloss, *loc. cit.:* Et hoc ideo quia pecunia non deterioratur, sed aliae res deteriorantur.

[183] D.88.c.11. Cf. p. 110, note 234.

[184] *Summa*, II.7.n.5, p. 210.

The canonists found in the Decretals a letter of Gregory IX touching this point in dealing with the lawfulness of sea-loans. The text declares that the man who loans money to another who is parting on a sea voyage or going to a fair, on the condition that he will assume the risk and receive something beyond the capital, is to be considered a usurer.[185]

Special titles in the collections of Justinian dealt with *pecunia trajectitia* where an unusually high rate of usury was allowed, permitting the principal to be doubled annually.[186] It was of the very nature of such a loan that the risk remained with the lender, the debtor being held responsible only when he had been culpably negligent, as, for example, if he did not follow the known routes but went into dangerous places. In the decretal quoted a voyage by sea is not necessary, and whether the merchant is going to a foreign port or to a market nearer home the Canon Law condemns as usury the taking of more than the principal even though the lender assumes the risk.

Commenting upon the text of Gregory IX[187] the canonists accept the decision here given,[188] but are at some pains to explain its reason. In his *Summa Aurea*, Hostiensis presents the difficulty as follows: In *pecunia nautica*, that is, where the lender assumes the risk, it seems that there is no longer present the nature of a *mutuum*. Now there is a natural reason why one may not accept usury on a *mutuum*, namely because both the ownership and the risk are transferred to the borrower and so it is unnatural that the debtor should be charged for the use of what is his. But this natural reason seems to be lacking in maritime loans because the lender retains the risk. Since he does assume this risk of loss it seems that he may rent the use of what is his own because a contract of rent is lawful. Why cannot this be done? [189] He suggests the reason of the differences between a *mutuum* and a *locatio* as contained in a *palea*,[190] and also the explanation offered by Goffredus. This canonist argues that, granting that the principal is not lost, the creditor will recover it and some profit in addition regardless of whether the merchant who has borrowed the money lose or gain in his trading.[191] Something has been received over the principal and so there is usury.

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[185] X.V.19.c.19.

[186] Dig. XXII, 2, *de nautico fenore;* cod. IV, 33, *de nautico fenere;* Nov. 106, *de usuris nauticis.* See C. B. Hoover, "The Sea Loan in Genoa in the Twelfth Century," in *Quarterly Journal of Economics*, XL (May, 1926), 495–529.

[187] Controversy has arisen as to the correct text of this canon of which the wording is clumsy, but the fact that later teaching is opposed to the doctrine which it contains should not cause us to reject the text as it stands. Cf. G. G. Coulton, 'An Episode in Canon Law', in *History*, New Series VI (July, 1931), 67–76. This writer accepts the text as having been correctly transmitted but is surprised beyond measure to find subsequent teaching generally opposed to it. Apparently believing (p. 74 and *passim*) that the texts of Canon Law are statements of dogmatic truths admitting of no making of distinctions, no discussion, interpretation or difference of opinion, he makes the shocking discovery that mediaeval writers do distinguish, discuss and interpret the canons, even hold opinions contrary to them. If the canonists and theologians had been characterized by the servile attitude toward texts which Dr. Coulton would seem to expect, then the charge of stagnation sometimes levelled against the mediaeval Church might well be applied at least to her theology and Canon Law.

[188] See the various commentaries on the c. 19, Innocent IV, Bernard of Parma, gloss and *Casus Longi*, Hostiensis, Bohic and Panormitanus.

[189] *Summa, de usuris*, n. 8, fol. 374^v: Sed nunquid pro trajectitia pecunia debetur usura? Videtur quod sic, quia ibi non est periculum debitoris et sic excedit naturam mutui. . . . Ratio enim naturalis quod pro mutuo non possit exigi ultra sortem haec videtur esse quia res mutuata transit in dominium recipientis . . . et suum est periculum, unde contra naturam est quod rem propriam sibi locem. Si enim petam a te decem quia cum pecunia tua lucraris, nunquid tibi apparebo furiosus? Sic, proculdubio. Sed haec ratio videtur deficere in trajectitia cum periculum recipiat in se creditor. . . . Item, ex quo creditor in se retinet periculum, locare potest usum rei propriae. Contractus autem locationis licitus est et concessus. . . . Quare ergo prohibetur in hoc casu?

[190] D.88.c.11. Cf. p. 110, note 234.

[191] *Loc. cit.:* In trajectitia etiam pecunia etsi creditor in se retinet periculum, pecunia tamen

These explanations do not solve the difficulty, according to Hostiensis, who then proceeds to give his own explanation of why sea-loans are usurious notwithstanding the fact that the lender accepts the risk of loss. Either the merchant uses the money as his own or he does not. If he does not, then it is unjust that the creditor demand from him gain which he has not received; if he does use it as his own, then the creditor has no longer the dominium because by consumption it is lost and passes to another. If a thing which is bought becomes the property of the debtor so does another's money so received. It is evident that the gain should not be demanded of the debtor who uses what is his own and makes gain from it. The risk, therefore, which the lender retains does not affect the matter. It is merely a burden which he assumes. He wishes to accept the risk, something which he is free to do, and such an agreement is valid. But he wishes also to receive something over the capital, and this he cannot do, so this part of the agreement is invalid.[192]

We have been dealing here with a loan made to a merchant, a *mutuum*, to which was attached a collateral contract whereby the lender agreed to retain the risk and the borrower agreed to transmit to him a certain gain. It is such contracts which are condemned by the Decretal of Gregory IX, contracts which are basically loans. But the canonists are familiar with the numerous texts of Roman Law, as well as with the practice of their time, concerning the existence of partnerships, *societates*, and with the opinions of the various Roman jurisconsults on the conditions governing such. After laying down the rule that one may not demand anything for the use of money which has been loaned to a merchant they go on to remark that if by the contract a partnership is formed where the risk will be borne by the two contracting parties, then it is quite lawful for the one party to supply the money and the other the labour which is lacking in the money itself and a participation of both in the profits is allowed. This is clearly stated in the Gloss [193] and held by all the canonists who insist here that they both share in the risk.[194] A company may not be formed in which all the risk is assumed by the one receiving the money and the gain reaped only by the one who supplies the funds.[195]

Another case is presented upon which the canonists are not so unanimous. May the party receiving the money bear all the risk of loss and the two parties share in the profits? Goffredus and others hold that a partnership may not be constituted under such conditions. Albericus says that if there is nothing done fraudulently, such a company may be lawful. For the most part, he argues, merchants do make a profit and the law is adapted to what most frequently occurs and not to the exceptional cases.[196] Hostiensis devotes a long discussion to this point and holds this

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salva remanente, habiturus est dominus aliquid ultra sortem quemcumque exitum commercii habeat, sive creditor (evidently "debitor" is meant) lucretur in mercibus, sive perdat, et ideo contrahitur nauticum foenus . . . secundum Goff(redum).

[192] *Ibid.:* Sed haec responsiones non solvunt opposita. Ideo dic quod haec est ratio naturalis quare pecunia trajectitia, non obstante quod creditor in se periculum retinet, usuraria reputetur. Quia, aut recipiens juvat se de denariis aut non; Si non juvat se, iniquum est quod creditor ab eo lucrum exigat quod non habuit; Si juvat, ergo non remanet dominium penes creditorem, quia consumptione amittitur et efficitur alterius. . . . Et si res empta efficitur debitoris, etiam de aliena pecunia empta sit. . . . Quare patet quod non debet ab eo lucrum exigere si re propria utitur et cum ea lucretur. . . . Periculum igitur quod in se retinet ipsum in nullo relevat sed potius oneratum relinquit. Imputet ergo sibi quia apposuit, periculum enim in se recipere voluit et potuit et ideo valet pactum; ultra summa exigere voluit, sed non potuit, et ideo non valet.

[193] Gloss on C.14.q.3.c.3. *negotiatoribus:* Sed si per illa verba societatem contrahunt, et tunc periculum spectat ad utrumque, tunc bene licitum est quod unus socius det pecuniam et alter suppleat laborem qui deest in pecunia.

[194] Hostiensis, *loc. cit.*, Panormitanus, *Commentaria* on c. 19, Vol. VII, fol. 246^{v}.

[195] All canonists on the same canon 19.

[196] See discussion by Hostiensis, *loc. cit.* Albericus, glossator of Roman Law, died around the end of the twelfth century.

last opinion. As in other contracts where by their nature the risk belongs to one party, an agreement may lawfully be made whereby it will be shared or borne by the other party, so it is in this contract of *societas*. Though by its nature the risk should be shared by both, an agreement can be made whereby it is carried by one party only.[197]

Panormitanus, who says that such contracts are of daily occurrence, opposes this view and claims the support of Azzo and Accursius.[198] The line of reasoning of Hostiensis does not hold because in these other contracts of which he speaks the stipulation that the risk be borne by both or by the other party is not opposed to their nature, "non contra sed praeter naturam." But in a contract of *societas* there must exist a kind of brotherhood and it is against the nature of such contracts that one party bear all the loss. Moreover, the text from the Institutes,[199] which Hostiensis invokes as supporting his view, may and should be interpreted differently. When it says that a company may be formed in which one party assumes all the risk it means all risks of loss except the loss of the capital itself. An agreement may be made concerning the risk of other losses involved, for example of labour, of reinvestment, whereby one will assume the complete responsibility. The capitalist may not, however, stipulate that the merchant will supply the labour as well as accept the risk of the loss of the capital and all other risks while he, the capitalist, does not stand to lose. The latter cannot lose because if his capital is lost the merchant is obliged to restitution. Such conditions are manifestly opposed to the idea of *societas*. Consequently, concludes Panormitanus, this opinion is safer and is to be held.[200]

Joannes Andreae would at least admit one exception to the rule that one may not receive gain in an investment without sharing the risk. He holds that one may place the marriage dowry with a merchant who will assume all the risk and return it undiminished when required to do so. The profits which he may make from it are to be divided between him and the owner. Panormitanus reasons that if this is permitted, then it is also permitted to place any money with a merchant or in a bank and attach to it a contract which will guarantee the safety of the entire sum and a sharing of the profits. Joannes Andreae, however, would restrict this privilege to the case of a dowry because a special need, the public good, requires that it be kept entire and safe. Panormitanus says that he has always doubted the validity of this opinion because it is not based on any text of law. Moreover, the canons forbid any dispensation, any exception, in matters of usury. Money may not be loaned at usury even to redeem captives, says a canon of the Decretals. If, then, such a contract is in itself usurious and unlawful, and both of these authors hold that it is, then no exception is to be allowed for the dowry. The good which results does not justify any compensation being received in this case where the owner does not share the risk.[201]

To return to our definition of usury. It has been shown that we may not in a *mutuum* receive anything in excess of the principal on account of the use which is ceded to another because the use is not distinct from the consumption. The same holds true in a loan made to a merchant even when the lender assumes the risk of loss because it is a *mutuum* to which a collateral contract is attached. This does not hold in other contracts which have just been discussed which are contracts of *societas* and not of *mutuum*.

It is clear that there is usury when there is a *pactum*, an agreement, concerning the payment of something more than the principal for a loan. If there is no agreement something which is offered freely may be received as we shall see later. But may one commit the crime of usury without any agreement? Yes, answer the canonists, in two ways: on account of the intention or hope of gain in the contract of loan and on account of an actual exaction of usury without any agreement. They base their teaching on two texts of the *Corpus Juris Canonici*. The first, in the Decretum, states that if one expects to receive in return more than the amount of the loan he is a usurer.[202] Urban III was asked whether one is to be adjudged a usurer in the confessional who would not lend money unless he knew that he would receive more than the capital, though no agreement of any kind was made.[203] Also, if one is guilty of the same crime who refuses to grant an extension of time to one who is under oath to repay a debt on a certain day, unless he makes him a gift, when it is known that the creditor is accustomed to accede to such a request when a gift is made, though there is no agreement and no actual exaction.[204] The Pope replies that both of these are guilty of the crime of usury on account of their intention, basing his response on the scriptural text, *mutuum date nihil inde sperantes*, and in the confessional they are to be efficaciously induced to make restitution.[205]

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[197] *Loc. cit.*, fol. 375r.

[198] See Gloss on Dig. XVII.2.f.29 and 30.

[199] III.25.n.2.

[200] *Commentaria* on c. 19, Vol. VII, fol. 246v.

[201] *Ibid.* Cf. below p. 131 ff.

In the presence of these texts most of the canonists, all of those whose works were consulted, do not hesitate to say that "spes facit usurarium." [206] Raymund of Penafort, however, accuses some of favouring the practice of usury by holding that there is never usury unless there has been a *pactum*.[207] The Gloss mentions the same opinion.[208] Alanus and all following him add that in order that there be usury without an agreement it is required that the hope or intention of gain be the principal motive of the loan. If it is but secondary there is no usury.[209] If, then, I am moved to loan you money principally because you will make me a present on account of the loan, to such an extent that otherwise I would not have granted the loan, my act is to be held as usurious. If, however, I would have made the loan anyway, though I do hope that you will remunerate me for the favour, I commit no sin or a very small one.[210] Baldus puts it a bit differently. Either, he says, the hope is the cause of the loan or the loan is the cause of the hope or it is doubted which is anterior. In the first case the opinion of the canonists is to be followed, that is, such persons are to be urged in the confessional to make restitution. In the second case there is no sin because it is natural that, having made the loan, one should expect some reward. In the third case it is to be left to the individual conscience to decide with the confessor.[211]

In no case are persons who are guilty of usury by hope or intention to be subjected to the penalties against usurers because these facts belong to the internal forum and may not be proven in court.[212] We shall see later the intention which may exist in those contracts *in fraudem usurarum*.

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[202] C.14.q.3.c.1: Si feneraveris hominem, id est si tu mutuum dederis pecuniam tuam a quo plus quam dedisti expectes . . . fenerator es.

[203] X.V.19.c.10: An ille in judicio animarum quasi usurarius judicari, qui non alias mutuo traditurus, eo proposito mutuam pecuniam credit, ut, licet omni conventione cessante, plus tamen sorte recipiat.

[204] *Ibid.:* Et utrum eodem reatu criminis involvatur, qui, ut vulgo dicitur, non aliter parabolam juramenti concedit, donec, quamvis sine exactione, emolumentum aliquod inde percipiat.

[205] *Ibid.:* Hujusmodi homines pro intentione lucri quam habent . . . judicandi sunt male agere, et ad ea quae taliter sunt accepta restituenda, in animarum judicio efficaciter inducendi.

[206] See the commentators on these two texts and Raymund, *Summa*, II.7.n.3, p. 208; Bohic, *Commentaria* on X.V.19.c.6, p. 172.

[207] *Loc. cit.:* Ad hoc quidam volentes favere usuris dicunt quod numquam committitur usura nisi ex pacto solvantur.

[208] Gloss on C.14.q.3.c.1. *expectes:* ex pacto secundum quosdam; vel etiam sine pacto quia sola spes facit usurarium.

[209] Gloss on X.V.19.c.10. *sperantes:* supple causa mutui in spe lucri principaliter posita; secundario tamen aliquid sperare non puto malum. Alanus Anglicus or Alanus Galensis was the author of a collection of decretals before 1210 and of an important *Apparatus* for the *Prima Compilatio* which exercised a considerable influence upon the Gloss of Bernard of Parma. See Schulte, *op. cit.*, I, 84, 188, 189.

[210] Hostiensis, *Summa*, *de usuris*, n. 1, fol. 372ʳ.

[211] Cod. IV. 32, on the rubric, fol. 82ᵛ.

Inspired by texts of both Roman and Canon Law,[213] the canonists remark that one who receives a favour from another is under a natural obligation to return it or to make some compensation. In a loan, then, the debtor has the natural obligation to do something for the creditor, remarks Alanus and others following him.[214] Why, then, cannot this natural obligation be made the object of an agreement? The canonists do not provide an answer to this question but either leave it unanswered or simply state that it is not permitted.[215] Moreover, in a loan an agreement may not be made whereby the borrower promises that he will loan money to the lender when the latter is in need.[216] Hostiensis objects that in such cases nothing is added to the capital and also there is a general rule that anything which is owed may form the object of an agreement. The words of Scripture refer only to gain or increase. I may hope that the debtor will aid me in a similar way and reduce this to a *pactum*. Having exposed his objection, Hostiensis concludes that the other opinion should rather be followed because so many things may happen in connection with the two loans that one may make a gain at the expense of the other.[217] The natural obligation to reward a favour does not even permit the lender to hope for remuneration, at least to the degree that this hope becomes the principal motive of the loan. This natural obligation merely permits him to entertain such a hope as a secondary motive.[218]

Is the following contract usurious? One lends another a sum of money and the debtor promises in return for the favour to pray for the creditor, to make a pilgrimage for him or to give his son lessons. Some canonists forbid all such contracts. Others make the necessary distinctions saying that such contracts are usurious only when what is received is estimable in money. They propose a specific case where usury may be committed. A professor lends money to his students on condition that they attend his lectures. Otherwise he would not have loaned it to them nor would they have become his pupils. If from such a practice the professor receives some service which may be estimated in money he is a usurer. If on account of his large following he receives an increase of salary or is appointed to a more lucrative post, he has received usury on his loans and is bound to make restitution, not to the students, but to the poor. Some would even accuse such a doctor of simony, of selling Christian doctrine.[219]

One who on account of an agreement or of intention receives more than the capital is then a usurer. But in a loan it may happen that no agreement was entered into concerning usury and the creditor had not as the principal motive the hope of gain, and yet actually he did exact something when the debt was repaid or later, but on account of the loan. The canonists do not hesitate to say that such a one is as guilty as the others and for this reason they include in their definition of usury, actual exaction of usury without agreement or hope.

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[212] Gloss on X.V.19.c.10. *male agere.*

[213] Dig. V.3.f.25.n.11; X.III.26.c.7.

[214] Gloss on X.V.19.c.10. *sperantes:* Immo naturaliter debitor est illi obligatus ad antidora; Hostiensis, *Commentaria* on same canon; Raymund, *Summa*, II.7.n.3, p. 208.

[215] Gloss on C.14.q.3.c.1. *plusquam:* Et naturaliter est ei obligatus ad aliam, quare ergo illam naturalem obligationem non potest deducere in civilem, scilicet ut pactum fiat pro illa danda, ad quam tamen tenetur, cum etiam talia interveniant in spiritualibus ad quae alias quis tenetur ut in X.III.5.c.11 et I.6.c.4?

[216] *Id. expectes:* Sed quid si mutuet eo pacto ut sibi etiam remutuet cum opus habuerit? Non credo quod illud posset deducere in pactum et ita hic naturalis obligatio non potest deduci in pactum. Archidiaconus adds here (fol. 239^{v}): Istam sententiam tenet Goff(redus) sed glossa praecedens (note preceding) videtur innuere contrarium.

[217] *Summa, de usuris*, n. 10, fol. 376^{v}.

[218] Raymund, *Summa*, II.7.n.3, p. 208: Ad hoc dicitur, salvo meliori judicio, cum Alano et Tancredo, quod creditor nullo modo debet pactum apponere, nec principaliter spem vel intentionem in tali retributione habere . . . et tunc forte si secundario speret quod ille debitor sibi remutuet vel aliquid simile, si opus fuerit, forte non est reprobandum. Raymund hesitates even to admit hope of reward as a secondary motive in a loan. The other authors, as we have seen, allow it.

[219] Panormitanus, *Commentaria* on X.V.19.c. 19, Vol. VII, fol. 247^{r}.

It is, then, forbidden to demand, to exact or to expect usury on a loan. Is it likewise forbidden to pay usury, to borrow money at usury? Hostiensis tells us that few people think this sinful and consequently they do not confess it, thinking that only lending at usury is prohibited.[220] On the other hand, a text of the Decretals formally declares that it is forbidden. It is a fragment of a letter of Alexander III to the Archbishop of Palermo and is to be found in a half dozen compilations of decretals before that of Gregory IX. The Pope has been asked whether one may borrow money at usury in order to redeem the poor who are held captive by the Saracens.[221] He answers that since the taking of usury is condemned by both the Old and New Testament no dispensation is possible. As it is forbidden to lie to save another's life, much more is it forbidden to involve oneself in the crime of usury to redeem captives.[222] The canonists are forced to conclude that no dispensation is given either to loan at usury or to borrow at usury. Both he who lends and he who borrows participates in the same sin, for if there were no borrowers at usury there would be no lenders at usury. He who provides the occasion for the sin commits the sin.[223]

However, in another series of texts the paying of usury is ordered. It is in cases where one has promised under oath to pay usury. In such cases the oath must be kept.[224] This ruling leads some of the canonists to conclude that the paying of usury is not in itself sinful.[225] Hostiensis gives it as an argument against those who teach that it is always sinful. If it were, he says, the oath would not be binding. Consequently certain distinctions must be made; we must consider times, places, persons and causes, because when we are placed before the alternative of two sinful acts the greater must be avoided.[226] Some of the canonists do make the necessary distinctions.

Huguccio says one will sin mortally by participation in the crime, who, in need of money, borrows at usury when he could borrow without paying usury.[227] Laurentius Hispanus states that the borrower may be the cause or the occasion of the other's lending at usury; either he induces him to lend when he was not in the habit of doing so or he borrows from one who is accustomed to lend at usury. In both cases he sins. Peter de Sampsona distinguishes the second member. One may from necessity be the occasion because one is in need of money, since in such necessity all things are common, or one may be the occasion without necessity, if for example one were to borrow money to spend for pleasure. In the first case he does not sin, in the second he does.[228]

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[220] *Commentaria* on X.V.19.c.4. *dispensationem;* Bohic, *Commentaria*, on c. 3, p. 169. A council of Mainz in 1310 (Mansi, 25, 340) excommunicates those who pay usury and do not within one month denounce the usurer. The penalty here is attached to the failure to reveal the usurer and not to the paying of usury.

[221] X.V.19.c.4: Postulavit utrum possit in recipienda pecunia ad usuram dispensatio fieri, ut pauperes qui in Sarracenorum captivitate tenentur, per eandem possint pecuniam liberari. This is the *pars decisa*, to which, however, some of the canonists refer. See Hostiensis, *loc. cit.* Without this passage it is not clear that it is borrowing at usury which is forbidden here and so some of the canonists do not treat the point, e.g. the Gloss and Bernard, *Casus Longi*.

[222] *Id.:* Respondemus quod . . . super hoc dispensationem aliquam posse fieri non videmus, quia, cum Scriptura sacra prohibeat pro alterius vita mentiri, multo magis prohibendus est quis ne etiam pro redimenda vita captivi usurarum crimine involvatur.

[223] Hostiensis, *loc. cit. dispensationem:* non solum quantum ad exercentem sed etiam quantum ad recipientem; *involvatur:* ipsas usuras exercendo, vel pecuniam ad usuram recipiendo, sicut quaeritur in decisione. . . . Peccat ergo mortaliter non solum qui usuras recipit sed etiam is qui ipsas solvere promittat, etc. Cf. Bohic and Panormitanus on the same text.

[224] See section IV of this study.

[225] Gloss on X.II.24.c.6. *reddere:* argumentum quod solvere usuras non est peccatum, alias non compellerentur. . . . Sed ille qui recipit peccat, et ita in eodem facto alter peccat, alter non; Sic etiam in alio casu unus committit adulterium, alter non ut C.32.q.5.c.4.

[226] *Commentaria*, on X.II.24.c.1. *mandamus:* Et est hoc argumentum contra illos qui dicunt quod recipere pecuniam ad usuram peccatum est; on X.V.19.c.4. *involvatur:* Quidam vero stant huic litterae indistincte, dicentes quod in nullo casu possunt recipi sine peccato. Sed haec opinio nimis rigida est, quinimmo et si vera esset indistincte, certum est quod juramentum non obligaret jurantem . . . et tamen obligat. . . . In hac ergo materia consideranda sunt tempora, loca, personae et causae quia inter duo peccata, semper quod majus est, si utrumque vitari nequeat, est vitandum.

Innocent IV gives a long commentary on this canon. Some, he says, permit a man to borrow at usury in order to perform any good work but not otherwise. Other authors do not allow such a simple rule. The borrower must take many things into consideration and choose between the good which will follow from the good work which he intends to perform, and the good which will result from omitting to borrow at usury. If a really great good will be done with the loan, for example, saving the lives of the poor or building a church, and on the other hand little or no good will be accomplished by failing to provide the lender with the occasion to lend at usury because he is ready to lend to others, then one may borrow at usury. If, however, the lender is on the point of repenting of his past sins and is going to cease lending at usury or if otherwise he could not find anyone else to whom he could lend, then the greater good would result from omitting to borrow. To borrow in such circumstances would really be doing evil for a good cause, which in no case is allowed. Against this opinion stands the objection that sin may never be committed on account of any good. Innocent answers that one may choose the greater good as above stated, or the lesser evil, for it is a great evil that the poor would suffer in body and soul from lack of money which such a loan could provide, while on the other hand the lender is going to lend anyway. Moreover, it is less sinful for him to lend at usury for a good work than it is for him to hide his money when people are in great need. The borrower is obliged, however, to tell him that it is sinful to lend at usury and to beg him to give or lend without usury. If he refuses then he may be asked to lend at usury.[229]

The same teaching is set forth by Hostiensis who rejects the opinion of the rigorists who would never permit one to borrow and agree to pay usury. He adds that the one who presents the occasion for the sin does not intend to participate in the crime but only to provide against his own necessities. For this reason he does not sin, though he is not to be excused from all blame.[230] Bohic says that one who in need borrows money from a usurer who is prepared to lend to all comers acts lawfully as does a man who, falling among thieves, shows them money which they will steal but spare his life. He adds that some teach that not only necessity but utility which will result to the borrower in his business will justify borrowing at usury.[231] This is an extension of the permission to borrow, an extension which has not been allowed by any of the canonists consulted. They all treat of the case of necessity and from the examples which they give it appears to be grave necessity. To admit utility as sufficient reason was to allow borrowing at usury in most cases, excluding only those where the purpose was pleasure.

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[227] *Summa*, on C.14.q.4.c.10. *facit rapinam*, fol. 218^{v}, col. 1.

[228] These opinions are reported by Bohic, *Commentaria*, on X.V.19.c.3, p. 169. See also Archidiaconus, *Rosarium*, on C.14.q.4.c.10.n°1, fol. 240^{v}. Petrus de Sampsona taught at Bologna during the period 1230–1260. Cf. Schulte, *op. cit.*, II, 108 ff.

[229] *Commentaria* on X.V.19.c.4. *involvatur.*

[230] *Commentaria* on X.V.19.c.4. *involvatur:* Et qui occasionem peccati dat peccatum committit; et tamen is qui recipit non intendit participare in crimine, sed tantum necessitati suae providere. Unde videtur quod non peccet. . . . Sed non propter hoc excusatur a toto. This opinion is followed by Panormitanus on the same canon.

[231] *Commentaria* on X.V.19.c.3, p. 169: Alii dicunt quod non solum in necessitate, sed etiam in utilitate quam quis consequitur agendo negotia sua, hoc licet.

The opinion of some of the canonists on this subject would certainly have been less rigorous had they known another letter of the same Pope Alexander III. It is a letter addressed in 1161 to the archpriest and canons of Pisa and was not inserted in any of the collections of decretals.[232] The Pope commands them to borrow a sum of money, at usury if it cannot be otherwise obtained. They are to remit it to a certain cardinal who will at once employ it to repay a debt which has been contracted with another citizen. The Pope promises that he or his successors will reimburse them for the loan.[233] This letter is typical of many to be found of a later date. Certainly Alexander III did not consider that it was sinful in all cases to pay usury; evidently the necessity in which he was placed was considered sufficient justification to borrow, agreeing to pay usury.

A point already touched upon in dealing with the nature of usury merits a few more remarks here. Why is usury forbidden? The canonists have not a great deal to say on this point; the theologians and philosophers are more concerned with this side of the problem and their influence is to be found in the works of the canonists especially from the end of the thirteenth century.

A text of the Decretum provided the canonists with the philosophical basis for the prohibition against usury since it deals with the very nature of money itself. The canon is not found with those on usury but is grouped with others dealing with the rules for the clerical life. Moreover, the text is not in the original work of Gratian but is a later *palea*.[234] It was not commented on by the decretists though it is referred to by them.[235]

Two reasons, both of the practical order, are furnished by the Decretals themselves. The third Lateran Council condemning usury in 1179 states that many persons are deserting other occupations to become money lenders.[236] The Fourth Lateran Council in 1215 says that by taking usury the Jews are gradually acquiring all the property of Christians. The result is, the canon continues, that churches are becoming impoverished because the tithes and oblations formerly paid by Christians on their homes and possessions are no longer going to support their churches.[237] Recalling this canon, the Second Council of Lyons in 1274 declares that the practice of usury is devouring both the souls and property of all Christians.[238]

Innocent IV,[239] followed by Hostiensis,[240] develops the reasons for the prohibition. Firstly, if the taking of usury were allowed many evils would follow. Especially would men leave off the cultivation of their lands except when they could find nothing else to do. This would cause great famines and all the poor would perish.

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[232] Jaffé, 10677 (P. L. 200, 125). We cannot say which of the two letters is the earlier as the one in the Decretals is undated, therefore it can only be said to belong to the pontificate of Alexander III, 1159–1181.

[233] *Id.:* Rogamus, quatenus pecuniam vobis sub convenientibus usuris, si aliter fieri nequit, a civibus vestris mutuo invenire et acquirere studeatis, et. . . . Bosoni . . . diacono cardinali illam assignetis, ut . . . civi credita pecunia sive contradictione et dilatione aliqua integre persolvatur.

[234] D.88.c.11. The text is from the so-called *Opus imperfectum in Matthaeum*, Homily 38 (P. G. 56, 839–841). Attributed to St. John Chrysostom, it is rather the work of an heretical writer of the fifth or sixth century (O. Bardenhewer, *Geschichte der altkirchlichen Literatur*, III [Freiburg in Br., 1923], p. 597). This *palea* is found in the Mss. designated by Friedberg C, D and H and also, in a later hand in F. It is absent in A, B, E and G.

[235] For example Huguccio, *Summa* on C.14. q.3. dictum ante c. 1, fol. 217r, col. 1; on c. 4, fol. 218r, col. 1. Note that it is attributed to a certain Gregory by Raymund, *Summa*, II.7.n.5, p. 210, and by Hostiensis, *Summa*, *de usuris*, n. 8, fol. 374v.

[236] X.V.19.c.3.

[237] *Id.* c. 18.

[238] VI°.V.5.c.1.

[239] *Commentaria* on Rubric to X.V.19.

[240] *Commentaria* on X.V.19.c.2. *periculosum.*

Though these might have lands to till, they would not have the animals and implements necessary because they have not their own and the rich would place their money out at usury where the profit is greater and more certain, rather than in agriculture where the gain is smaller and less certain. Food would be so expensive on account of its scarcity that the poor would be unable to purchase it. All this constitutes then a grave danger to the faithful. For this reason David chose the pest rather than famine because the first attacks all men, rich and poor, whereas famine afflicts the poor.[241] Secondly, no one can long pay usury without being reduced to poverty which is dangerous to men as only a special gift of God can make one desire and willingly accept poverty. Thirdly, usury is prohibited because one who practises it can hardly avoid falling into the sin of idolatry. The heart of the avaricious man is in his money. For these reasons usury is forbidden absolutely by the divine law, for though it may be possible to find some cases in which it is not sinful from natural law, however, on account of the great evils and dangers attendant, it is forbidden in all cases.[242] He adds that some say usury is prohibited especially because it is against charity and piety since we are obliged to love our neighbour and succour him in his need.[243]

In other passages Innocent states briefly other reasons for the prohibition, namely that charging usury is selling time itself which is common to all,[244] and because money is unproductive.[245] Bohic takes up this last reason and bases the prohibition on the very nature of money.[246] Panormitanus develops this point and seems to prefer it to the reasons advanced by Innocent IV. Usury, he says, is a sin against nature. Since by its nature money is sterile and is but the measure of things, it is unnatural that money should be made to produce money.[247] Note that Joannes Monachus gives this reason as the basis of the Church's claim to jurisdiction over cases of usury. The crime of usury is principally against God in that an abusive use is made of things.[248]

[241] II Kings, XXIV, 12 ff. Hostiensis (*loc. cit.*), adds the third alternative, the attack of enemies, and says that it was not chosen because here also the poor suffer while the rich build fortresses.

[242] *Loc. cit.:* Et ideo generaliter prohibita est a divino utroque testamento, nam licet inveniri forte posset casus ubi jure naturali quod natura homini indidit non esset peccatum usura, tamen propter mala et pericula qui sequerentur, omni casu prohibita est. Quidam tamen dicunt, et forte non male, quod etiam non est invenire casum instinctu naturae qui non prohibeatur.

[243] *Id.:* Dicunt etiam quidam usuram prohibitam magis quia esset contra charitatem et pietatem qua teneor subvenire proximo, quam propter mala qui sequuntur.

[244] On X.V.19.c.6. *ex forma.*

[245] On X.V.39.c.48: cum nullus ex pecunia sit fructus.

[246] On X.V.19.c.19, p. 176.

[247] *Commentaria* on rubric to X.V.19, Vol. VII, fol. 231ʳ: Sunt et aliae rationes coadjuvantes, sed videtur quod illa, scilicet quam tacite supra sensi, sit melior: quia usura est vitium quoddam contra naturam rerum quando pecunia germinat pecuniam, quae tamen naturaliter non est apta germinare, cum sit tantum in mensura rerum . . . et venditur usus rerum ubi non est.

[248] *Id.:* Et per hanc rationem dixit Jo(annes) Mo(nachus) in c. 1. eod. tit. lib. VIº (V.5.c.1.) quod ecclesia hoc casu vendicat sibi jurisdictionem in laicos, quia usurarii committunt principaliter in Deum, abutendo rerum usu, ideo ad ejus vicarium spectat punitio. Jean Lemoine, counsellor of Philip the Fair of France, became cardinal in 1294 and died in 1313. He composed an *Apparatus* to the Liber Sextus. Cf. Schulte, *op. cit.*, II, 191–193.

The civilians also touch the question of the reason for the prohibition of usury. Cinus (on Auth. *ad haec*) seems to hold that it is because usury is against the natural law. Bartolus (on Auth. *de eccl. titulis*, preface, Vol. IX, fol. 52ʳ) simply sends his readers to the reasons given by Innocent IV. Baldus (on Cod. IV. 32, rubric, fol. 82ʳ), repeats these and says also that every obligation must have a counter obligation. Now in usury there is none because the one paying usury has both the dominium and use of the money since they are inseparable, so he pays the creditor for something which the latter has not. The objection that usury is on account of the benefit which he has received does not stand because this natural obligation may not be reduced to a formal obligation. Again he says (on Cod. I.1.1, fol. 4ᵛ) that in usury there is only a figure without substance or cause. Since in a loan the dominium is to be repaid the creditor is demanding something for which there is no cause since the debtor has both the dominium and the use during the

B. *Contracts* in fraudem usurarum

WE HAVE seen the canons and canonists condemning the taking of usury and the hope of receiving usury on a loan. This is usury in the strict sense. But there is a broader meaning given to the word and a considerable part of the literature is concerned with this wider concept of usury. The canons, in fact, forbid not only usury on a loan but all gain from a number of other transactions which are not strict loans. When usury on a *mutuum* was forbidden and restitution could be obtained in the ecclesiastical courts, men devised other means of achieving the same result, of making a profit from their capital, by entering into other contracts where the *mutuum* apparently did not exist. These persons are said to act *in fraudem usurae, in fraudem usurarum.*[249] We shall see in studying these contracts that the canonists call such gain usury, that such persons are called usurers and their contracts usurious. First we shall note some of the texts in which the strict and broad notions of usury are to be found together.

Already in the texts of the Decretum such a general description of usury as *quidquid sorti accidit* was made capable of comprising many forms of gain by the addition, *quodcumque velis ei nomen imponas.*[250] The councils of our period refer to usury and usurious contracts; [251] they command the extermination of usury, whether manifest or hidden; [252] measures are taken to put a stop to the fraudulent dealings of usurers; [253] contracts of sale made *in fraudem usurarum* are branded as usurious; [254] those who engage in buying and selling on credit are to be adjudged usurers; [255] those who, under a pretence of sale, practise usury are to be punished by the penalties against usurers.[256] Though, states a canon, usury is committed only in a *mutuum*, yet those are to be considered usurers who enter into any of the contracts which will be treated shortly.[257] Besides condemning a number of such frauds specifically, the Decretals indicate that there are many forms of usury,[258] and that other contracts may be devised to escape the penalties against usurers.[259]

As will be seen, the canonists treat all these transactions as cases of usury. There are many kinds of usury, they teach; [260] any new contract which may be invented to avoid the condemnation of usury on a loan is to be held as usurious [261] because

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time of the loan. Hence, the usury can only be proportionate to the time and this is impossible because time, like air and light, is common to all. Therefore in paying usury there is no cause because no obligation can be based on time alone. Baldus refers to Aristotle and Saint Thomas Aquinas in his explanation of this difficulty.

[249] It would be unjust to these men, and moreover inexact, to say that all these contracts originated in a fraudulent attempt to evade the decrees on usury, though they were often resorted to to make a profit when loans at usury were forbidden. Most of them grew up naturally with the developing economic life.

[250] See the four canons and dictum of Gratian in C.14.q.3.

[251] Vienne, 1267, can. 8, Mansi, 23, 1172: Usuras et contractus usurarios exercere praesumant.

[252] Paris, 1212–1213, Part V, can. 5, *id.*, 22, 850: Usuram quocumque modo, aut manifestam, aut aliqua simulatione palliatam.

[253] Noyon, c. 1280, can. 3, *id.*, 24, 375: ad refraenandas foeneratorum fraudes.

[254] Constitutions of Ferrari, 1332, can. 46, *id.*, 25, 923 ff.

[255] Avignon, 1282, can. 1, *id.*, 24, 439: intelligentes usurarios etiam qui . . . quoscumque contractus alios faciunt in fraudem usurarum, quocumque alio nomine censeantur.

[256] Würzburg, 1287, can. 23, *id.*, 24, 859: Sed quia novo quaesito foenerandi colore, nonnulli sub titulo venditionis exercent usuras.

[257] Prague, canons approved by a council of 1349, *id.*, 26, 98. Mansi reports these canons as resulting from a council held around 1346 and renewed in 1355. Hefele, *Histoire des conciles*, translation Leclercq, VI (Paris, 1915), p. 902 ff., says they form a collection approved in 1349.

[258] X.V.19.c.1: Decrevit ut nullus . . . hoc vel aliud genus usurae exercere praesumat.

[259] X.III.17.c.5: Instrumento venditionis confecto in fraudem canonis promulgati contra usurarios non obstante.

[260] Gloss on X.V.19.c.1. *genus:* multa enim sunt genera usurarum; Hostiensis, *Commentaria* on same word: quia multa sunt.

[261] Gloss on D.47.c.2. *transigens:* id est quodcumque novum pactum vel contractum inveniens in fraudem usurarum.

many persons will not break the letter of the law yet will circumvent it and oppose its intention.[262] From their form many contracts are not usurious but, since they are made *in fraudem usurae*, they are to be considered such, no matter what name they bear,[263] since they are as illegal as loans at usury.[264] The intention in such contracts, the intention of avoiding the law and obtaining usury, makes them blameworthy,[265] and nothing is to be gained by changing their names.[266] Hostiensis criticizes those who hold that usury is committed only in a *mutuum* and adds that regularly it is only committed in such a contract but it may exist in other contracts. As regards the form there can be a usurious contract only in a *mutuum* but the intention may make other contracts usurious also.[267] Other canonists make this same distinction. Regularly, and properly speaking, usury is only on a *mutuum* but, on account of the fraudulent intention inspiring them, other contracts become usurious: "non quoad formam sed quoad intentionem depravatam est usura."[268]

A number of these contracts will now be considered, not all of them, but some of the most commonly used. These contracts appear in the Decretals where they are condemned and the canonists discuss others which are to be found in the practice of the time.

1. *Loans on security*[269]

One of the earliest and, for a long time, commonest forms of contracts used to make a usurious profit without incurring the penalties against usury was the loan on security. When the debtor receives the loan he places a piece of land or something of the kind in the hands of the creditor who will retain it until the debt is paid. During this time he receives the fruits which he does not deduct from the debt. Consequently the creditor has made a gain, has received something over and above the amount of the loan.

There are no texts on this subject in the Decretum though it has been shown that the practice existed for a long time previously and seems to have been much used by the monasteries.[270] Asked by the bishop of Padua whether those persons commit the crime of usury who retain the fruits of a pledge which has been placed with them for a loan, Eugene III answers that all are guilty of this crime who receive more than the capital; that whatever is added to the capital is usury.[271] Alexander III made a great effort to stamp out this form of usury and with a certain measure of success, at least as concerns the religious establishments. A number of his decretals are to be found in the canonical collections. The first text of the title *de usuris*, a decree of the Council of Tours presided over by Alexander III in 1163, condemns clerics for practising this form of usury and declares that when a gage has been given for a loan the fruits are to go toward extenuating the loan and when they equal the loan and the expenses incurred by the gagee, the latter must return the gage to the gagor. Also the gagor may recover his gage at any time by paying the difference between the gage and the revenue received from it, deducting, of course, from these the expenses to which the gagee may have been put.[272] The same rule is laid down in other texts of the Decretals which apply to laymen as well as to clerics.[273] Two exceptions are made to this rule, when the security is an ecclesiastical fief[274] and when it is given to the husband as gage for a dowry as yet unpaid.[275]

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[262] Gloss on C.14.q.3.c.3. *praecepta:* Nolunt quidam facere contra legem sed faciunt fraudem legi. Ille vero facit fraudem legi qui observat verba legis sed mentem ejus circumvenit.

[263] Gloss on X.V.19.c.6. *ex forma:* Et ita forma contractus inspici debet ad hoc ut usurarius censeatur quia omne esse est ex forma. Sed hoc non est semper verum in casu isto ut infra dicitur. Repeated by Hostiensis on the same words.

[264] *Id. venditores:* Licet enim ex forma non sit contractus usurarius, potest tamen fieri in fraudem usurarum, unde æque tenetur . . . et quodcumque nomen imponas usura est.

[265] Bernard, *Casus Longi* on X.V.19.c.10; Hostiensis, *Summa, de usuris*, n. 8, fol. 375^{r}.

[266] Hostiensis, *loc. cit.*, fol. 374^{v}: Et quodcumque nomen imponas usura est. . . . Omnis enim usura et superabundantia prohibetur . . . et sic non est vis in mutatione nominis.

[267] *Id.*, fol. 375^{r}: Ipsimet (i.e. Raymundus et Goffredus) etiam scripserunt quod non habet locum contractus usurarius nisi in mutuo, et ego junxi "regulariter," ut oppositionem multorum casuum evitarem sicut notavi supra, eodem, n. 1, where he has said (fol. 372^{r}): Ideo dicitur quia in contractu mutui tantum locum habet secundum Goffredum et Raymundum et quasi omnes. Sed tu junge regulariter. . . . Scripsit Raymundus non committi usuram nisi in his rebus tantum in quibus consistit mutuum; intelliges quoad contractum, quia in alio contractu regulariter non debet committi usura.

[268] Bohic, *Commentaria* on X.V.19.c.6, p. 173: Unde dicebat Gof(fredus) et Joa(nnes) And(reae) post eum, dicens hic quod forma usurarii contractus proprie est in mutuo. In contractu vero venditionis non committitur usura quoad formam sed ex mente; Panormitanus, *Commentaria* on X.V.19.c.19, Vol. VII, fol. 246^{r}.

[269] This is a *mort gage* in the language of Glanvill and of Beaumanoir. See *De legibus et consuetudinibus Angliae*, edit. Woodbine (New Haven, 1932), Bk. XII, chap. 6 and 8, p. 137 and 139, and *Coutumes de Beauvaisis*, edit. Salmon, Vol. II (Paris, 1900), p. 474, nº 1931. The characteristic of this mortgage is that the profits reaped from the gage placed in the hands of the creditor are not to reduce the debt. For the classical law of mortgage, see F. P. Pollock and F. W. Maitland, *The History of English Law* (2nd ed., Cambridge, 1911), II, 120 ff. The terms gage, security, and pledge will be used to avoid confusion.

The same prohibition is to be found in many councils of the period where the practice is condemned along with usury in the strict sense and often it is expressly called *usura*.[276] A number of the collections of *droit coutumier* refer to this form of usury.[277] The *Ordo Judiciarius* of Aegidius de Fuscarariis contains a model *libellus* for the recovery of a pledge the fruits of which have cancelled the debt.[278]

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[270] See R. Génestal, *Le rôle des monastères comme établissements de crédit étudié en Normandie du XI à la fin du XIII siècle* (Paris, 1901).

[271] Jaffé, 9667, P. L. 180, 1567. This letter is to be found in the Collection of Bruges, tit. V.c.4, edit. Friedberg, *Die Canones-Sammlungen zwischen Gratian und Bernhard von Pavia* (Leipzig, 1897), p. 142.

[272] X.V.19.c.1.

[273] X.V.19.c.2; II.24.c.7; III.21.c.6. Two more letters of Alexander III on the same topic are in the *Compilatio Prima*, V.15.c.6 and 7, edit. Friedberg, p. 59.

[274] X.V.19.c.8; III.20.c.1. See below, p. 126 ff.

[275] X.V.19.c.16. See below, p. 131 ff.

[276] Montpellier, 1214, can. 4; Trier, 1227, can. 10; Trier, 1238, can. 34; Trier, 1277, can. 10; Prague, 1349 (Mansi, 22, c. 941; 23, c. 34, 483; 24, c. 201; 26, c. 86). Statutes of Durham, c. 1220; Constitutions of Canterbury, c. 1236, can. 22 (Wilkins, I, 578, 637).

[277] This kind of usury is condemned by the *Livres de Jostice et de Plet* (1254–1273), L. XX, tit. 14, n. 1 and 4, edit. Rapetti (Paris, 1850), p. 328 (*Collection des documents inédits sur l'histoire de France*), n. 1: L'en establist ci que nus ne soit usurier. Et se aucuns prant d'aucun aucune teneure, praigne les fruiz, et soient contez en aquit. Et quicunques ce fera, soit mis en poine; n. 4: Uns hons se plaint d'un autre qui tenoit sa terre en gages, et qui avoit eu des fruiz outre le chetel. Li rois commende que s'il est issint, qu'il ait sa terre arrière. Beaumanoir in his *Coutumes de Beauvaisis* (1279–1283) n° 1931, edit. Salmon, Vol. II (Paris, 1900), p. 474, no less clearly condemns such contracts as usurious: Encore est il une autre manière d'usure, de quoi nous n'avons pas parlé, que li aucun apelent mort gage, si comme aucuns preste une somme d'argent seur aucuns eritages qui sont nommé, en tele manière que, tant comme li emprunteres tenra les deniers, li presteres tenra l'eritage et seront les despueilles sieues dusques a tant qu'il rait la somme d'argent qu'il presta, sans riens rabatre des levees de l'eritage. En cel cas disons nous que nule plus aperte usure ne puet estre que cele que li presteres oste des despueilles de l'eritage. Donques se cil qui ainsi preste en mort gage veut pledier de l'usure, toutes les despueilles que li useriers leva sont rabatues de sa dete. The treatise of Glanvill reveals a curious Anglo-Norman view of the matter. Such a contract, he says, is dishonest and unjust and considered to be usurious but is not prohibited by the law of the realm. Apparently such a contract will be enforced by the courts. But if the party who profited by the contract dies without repenting of his sin he is treated as a usurer and his chattels will be forfeited to the king. *De legibus et consuetudinibus Angliae*, edit. Woodbine (New Haven, 1932), Bk. XII, chap. 8, p. 139: Secunda conventio injusta est et inhonesta, quae dicitur mortuum vadium, sed per curiam domini regis non prohibetur fieri, et tamen reputat eam pro specie usurae. Unde si quis in tali vadio decesserit et post mortem ejus hoc fuerit probatum, de ejus rebus non aliter disponetur quam de rebus usurarii. That is, his chattels go to the king. Cf. Bk. VII, chap. 16, p. 112.

[278] Libellus CL, edit. Wahrmund (Innsbruck, 1916), p. 214—*Quellen zur Geschichte der römisch-kanonischen Prozesses im Mittelalter*, Vol. III, Part I. Aegidius, pupil of Bernard of Parma, is considered to have been the first

The first commentators of the Decretum do not mention this transaction in their discussion of usury, but shortly before 1190 it is discussed by Huguccio [279] and then by Bernard of Pavia,[280] who have become familiar with the decrees of Alexander III through the numerous collections of decretals. All the canonists state briefly that this practice of retaining the fruits of a gage is a transaction *in fraudem usurarum*,[281] and is a kind of usury.[282] The creditor is enriched by the revenue which has a value and so by an agreement he has demanded something in excess of the principal.[283] The expenses which the gagee is permitted to deduct from the fruits are those which he has incurred in reaping them. They must not be superfluous but merely what are necessary.[284]

2. *Simulated sale contracts*

The creditor, forbidden to retain the revenues from a gage placed in his possession for a loan, invents new ways of accomplishing the same result. One method was to combine the loan-security contract with a contract of sale, the latter being merely simulated. This transaction must have made its appearance toward the end of the twelfth century, perhaps following the campaign of Alexander III against the loan-security contracts which have just been studied. In any case Innocent III wrote several letters on the subject. The first, addressed in 1203 to the Bishop of Polygnano, presents the following case: A wishes to borrow money from B and is prepared to give a field as security. B wishes to make a profit from the loan but if he retains the fruits reaped from the land he will fall under the penalties of the canons directed against usurers. To avoid this, instead of granting the loan on security he buys the field for a certain sum of money, promising in the contract that A may recover the field at a certain price any time between seven and nine years. The prices and the time are so calculated that the creditor will reap a profit from the fruits of the field which he pretends to buy. Some time later A's heir claims the field, asserting that it was held as a pledge for a loan and that the revenues received by B have cancelled the loan. The Pope orders an examination of the affair and declares that if the facts have been correctly stated the contract of sale is to be adjudged to have been made *in fraudem usurae* and is null and void. The creditor is to be treated as a usurer and forced to deduct the fruit of the gage from the debt. The truth of the matter as to whether it is a pure loan contract or a contract of sale is to be learned from a consideration of the prices stated in the contract and the value of the fruits. Also, he says, there is a presumption that it is not a true sale because the debtor has been granted the privilege of recovering his property after a certain time.[285]

A similar case arises in Pisa four months later and Innocent III is consulted. The creditor maintains that it was a contract of sale and offers the document as evidence. The debtor asserts that it was a loan on security because of the condition

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lay decretist at Bologna. His work was composed between the years 1262 and 1266. Cf. introduction to the edition cited, p. xxiv, ff.

[279] *Summa* on D.47.c.2. *adinventionem*, fol. 54^v, col. 2; C.14.q.3.c.3. *accedit*, fol. 217^v, col. 2.

[280] *Summa*, V.15.n.3, ed. Laspeyres, p. 234.

[281] Gloss on D.47.c.2. *transigens:* Id est quodcumque novum pactum vel contractum inveniens in fraudem usurarum, ut si sumat rem in pignore et non computat fructus in sortem.

[282] Hostiensis, *Commentaria* on X.V.19.c.1. *vel hoc:* hoc enim quoddam genus usura est; *id. sub hac specie:* quod fructus in sortem non computet. Est enim unum genus usurae.

[283] Panormitanus, *Commentaria* on same canon, Vol. VII, fol. 231^r.

[284] Hostiensis, *loc. cit. deductis expensis:* quae fuerit causa quaerendorum et colligendorum fructuum. Gloss on *expensis:* et hujusmodi expensae non debent esse superfluae . . . et illae tantum sunt deducendae quae in ipsam rem factae sunt necessariae et pro fructibus colligendis. Raymund, *Summa*, II.7.n.8, p. 215, adds: Non solum expensas quas fecit colligendo fructus, sed etiam quas fecit bona fide circa rem pignoratam.

[285] X.III.17.c.5.

attached to the contract, namely, that if the creditor were dissatisfied with the transaction within two years, then within another year the debtor might recover for twenty-six pounds, part of which would be the fruits received, the land which he had given for twenty-three pounds. The Pope declares that there is a triple presumption that the contract is usurious. First because of the fact that the revenues are to be counted in the price of redemption, since if he had really bought the land the creditor would consider the fruits his and be unwilling to return them. Secondly is the fact that the debtor is obliged to pay more than he received. Lastly, the creditor is in the habit of exacting usury on loans.[286] A letter of 1207 presents a like case where the condition placed in the contract is that the debtor may redeem his property when he repays the price which he received for it. Later he demands its return maintaining that it was not a sale but a pledge, the revenues from which have paid off the debt.[287]

The councils of the period condemn this new fraudulent method of obtaining usury where the creditor under cover of an act of sale pretends to buy the gage for a loan and so retains the fruits which net him a profit for the loan of money. Such a contract, these canons state, is to be held as invalid and the real contract, a loan on security, is branded as usurious.[288] Hostiensis tells us that in his day usurers are continually purchasing the possessions of the poor by a contract which allows the sellers to recover them for the same price any time between seven and nine years from the date they are made. During this time the usurers reap all fruits from the possessions.[289] Aegidius [290] and William Durand [291] provide *libelli* for demanding the return of such pledges obtained by simulated sales.

As Innocent III points out, a contract of sale may, however, be made conditional and so broken later. The fact that this condition is present does not render it usurious and it is not to be assumed that it is a loan-security contract rather than a real contract of sale.[292] Recourse must be had to other presumptions. The canonists also remark that such a contract is in itself lawful provided nothing is done fraudulently. There is a presumption of fraud especially when the price paid does not at all correspond to the value of the object sold or pledged.[293] Hostiensis lists five presumptions which may be used against a creditor who pretends that there is a real contract of sale. The creditor allows himself a certain period of time during which it seems he wishes to try out what has been given as security; if he is dissatisfied the contract may be broken, a privilege which the other party does not enjoy so it is a lame contract; the terms really give him a profit; he agrees to count the fruits in the price of redemption instead of wishing to keep them as he would in a sale; he is accustomed to receive usury. Such presumptions may all be used against the creditor, because, in reality, they are not against him since it is for the good of his soul, he says, that the truth be established and that if guilty he be punished as a usurer.[294] This last would hardly be classed as a very weighty juridical reason by counsel for the defence.

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[286] X.III.21.c.4. The last part of the text reads: Ex duobus tamen quae in pacto fuerunt expressa, videlicet, quod fructus percepti deberent in solvenda pecunia numerari, et quod ultra sortem receptam . . . deberent persolvi, contra ipsum emptorem praesumitur vehementer, praesertim cum usuras consueverit exercere, fraudemque committere usurarum.

[287] Potthast, 3145, P. L. 215, 1190.

[288] Würzburg, 1287, can. 23 (Mansi, 24, 859); Agreement passed between the king and bishops of Aragon, 1234, nº 20 (*Id.*, 23, 332); Constitutions of the Church of Ferrari, 1332, can. 46 (*Id.*, 25, 923 ff.).

[289] *Commentaria* on X.III.17.c.5. *a septennio.*

[290] Libellus CLI, edit. Wahrmund, p. 214.

[291] *Speculum Juris*, Lib. IV, Part. IV, nº. 3, p. 501.

[292] X.III.21.c.4: Respondemus quod qualiscunque fuerit intentio contrahentium, et ex forma contractus, venditio non appareat conditionalis sed pura, quamvis per conditionem possit resolvi. . . .

[293] Hostiensis, *Commentaria* on III.17.c.5. *mutuum:* ego emam et usque ad certum tempus eodem pretio tibi reddam, quamvis enim talis contractus licitus sit ubi nulla fraus intervenit . . . in tali casu praesumitur usurarius contractus . . . maxime quando quantitas modica est; Gloss on X.III.21.c.4; Bohic, *Commentaria* on these two canons.

Panormitanus states that these pacts *de retrovendendo* are of daily occurrence and discusses the value of two grounds for the presumption of usury, namely that the contract allows recovery of the object sold or pledged and that the price does not correspond to the value of the object. Two civilians, Jacobus de Arena [295] and Dinus de Mugello, whose opinions he quotes, hold that these presumptions are not sufficiently strong to permit one to decide that the contract is fraudulent. Joannes Andreae,[296] Bernard of Parma [297] and Archidiaconus [298] consider that they suffice. Panormitanus himself concludes that, though the law itself does not decide the point, there must be a great difference between the price and the value. A much stronger presumption is possible when the creditor is known to be a usurer.[299]

3. *Buying and selling on credit*

Two other transactions, closely resembling one another, and in themselves lawful, lent themselves to fraud and tended to be usurious. For this reason we find them condemned by the canons. They are the *venditio* and *emptio ad tempus* or *ad terminum*. In the first case the seller defers payment and on account of this delay the article is sold at a higher price. In the second, payment is made now for goods to be delivered at a later date and on account of the deferred delivery the price is lower than it would have been had the payment also been deferred. Both of these contracts may be considered to cover up a *mutuum*. When I buy from you on credit and pay a higher price on account of the delayed payment there is the equivalent of a double contract of a sale and loan. You sell me goods for which I pay you the current price and you loan me the price for a certain time at a rate of usury represented by the difference between the price which I pay and the current price. In the second case, when I pay now for goods to be delivered later and am allowed a lower price the same thing is true. I have in fact loaned you a sum of money at usury represented by the reduction in the price which I have paid.[300]

The condemnation of these contracts appears in the time of Alexander III and three texts are to be found on the subject in the Decretals. The Archbishop of Genoa relates that in that city persons are accustomed to buy merchandise which at the time is selling for five pounds and they promise to pay six at the end of a certain time. Consulted as to the legality of this practice, Alexander III declares that from its form such a contract cannot be considered usurious. However, the vendors do commit sin unless there is doubt as to the value of the merchandise at the time of payment. He advises the prelate to counsel his subjects to refrain from such transactions because their thoughts cannot be hidden from Almighty God.[301] Urban III, asked whether in the confessional those are to be treated as usurers who sell their produce at a much higher price because of deferred payment, answers that on account of their usurious intentions they are to be efficaciously induced to make restitution.[302] Note that the case says they sell for a *much* higher price. In one of his own decretals, Gregory IX declares that one who pays now for goods to be delivered later is not to be reputed a usurer even though the goods may be worth more at the time of delivery provided there was a reasonable doubt as to whether they would be worth more or less then. The same doubt excuses those who sell higher than the present price for later payment if they are not about to sell them now for the current price for immediate payment.[303]

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[294] *Commentaria* on X.III.21.c.4 and III.17.c.5; Raymund, *Summa*, II.7.n.4, p. 209. Cf. also the additions of William of Rennes to this section.

[295] Taught at Bologna in last part of the thirteenth century. Cf. Savigny, *op. cit.*, V, 339 ff.

[296] See his additions to the *Speculum Juris* at the place indicated in note 291, p. 116.

[297] Gloss on X.III.21.c.4.

[298] *Rosarium*, C.14.q.3.c.3.n°1, fol. 240ʳ.

[299] *Commentaria* on X.III.17.c.5, Vol. VI, fol. 133ʳ: Puto tamen quod non sufficiat quaelibet injustitia pretii sed debet esse pretium valde tenue respectu valoris rei. . . . Et maxime hoc procederet si emptor esset usurarius. Et nota hunc casum quia quotidie accidit.

[300] See the analysis of these contracts by Panormitanus on X.V.19.c.6 and 19, Vol. VII, fol. 236ᵛ and 246ʳ.

[301] X.V.19.c.6.

[302] *Id.* c. 10.

The canonists provide us with an explanation of these texts which contain a prohibition against both buying and selling *ad terminum*. There is, they say, a delay either in payment or in delivery. In neither of these cases is the form of the contract usurious so that these texts apply only to the internal forum, the confessional. This is an important consequence. Persons making such contracts will not be condemned by the courts which judge according to the forms of contracts and do not touch the affairs of conscience. In these cases it is an affair of conscience because all depends on the doubt or the intention in the mind of the person. They will, however, be compelled, *efficaciter inducendi sunt*, to make restitution but will not suffer the other penalties against usurers.[304]

Alanus and others following him note that the parties to the contract must knowingly pay more money or deliver a greater value of goods on account of the delay.[305] The prohibition is not against these contracts themselves but only because in them the price is altered on account of the time with the result that time itself is sold causing an increase over the just price. This is evident from the fact that if there had been a cash transaction the price would have been different.[306] Note that the doubt of which it is a question in these texts must be a probable one.[307]

If, in the case where the delay is in the delivery of the goods, there is a doubt as to whether they will then be worth more or less than what the purchaser pays here and now, there is no usury. But if it is certain that they will be worth more upon delivery, there is usury, according to all the canonists. It may be objected that such certitude is never to be had because all contingencies cannot be foreseen. They answer that there can be moral certitude. For example, if I buy wheat at the current price at harvest time for delivery at Easter it is certain that wheat will have a greater value then. The common opinion of men and the known fluctuations in price in a particular region enable one to arrive at the required degree of certitude. Though the unexpected may happen, the presumption does not cease to hold because we must consider what happens usually. To avoid difficulties and usury if these time contracts are going to be employed one should buy from summer to summer, from winter to winter, etc., because values are about the same each year at the same season.[308]

In the case when the payment is deferred there is no usury if the selling price is not increased on account of the delayed payment unless it is reasonably felt that the price at the time of payment may be higher. Also there is no usury if the seller did not contemplate selling now for cash payment at a lower price. There is usury if the price is raised much higher on account of the delay that the doubt would justify and also when the seller is willing to part with his goods for a lower cash payment.[309] Joannes Teutonicus gives only one norm by which to judge whether such a transaction is usurious. To sell for a slightly higher price on account of the doubt is permitted, but to sell at a much higher price than the current one is usury. To this norm Bartholomew of Brescia adds another, namely that the vendor is willing to sell for less for payment now.[310] Raymund of Penafort seems to make the greatly increased price the test.[311] Innocent IV allows both,[312] as does Hostiensis.[313] According to the common opinion, then, in order to avoid committing usury in such contracts, there are two conditions required: the existence of a doubt as to the price at the end of the time of delay, and that the owner is not going to sell for cash at a lower price. If either of these be lacking the contract is usurious.[314]

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[303] *Id.* c. 19.

[304] Gloss on c. 10. *male agere;* Hostiensis, *Commentaria* on c. 6; Bohic, *Commentaria* on c. 19, p. 176; Panormitanus, *Commentaria* on c. 6 and 19, Vol. VII, fol. 236^v and 246^r.

[305] Gloss on c. 10. *comparant:* non decepti in justo pretio sed scienter plus emerunt propter dilationem solutionis; Hostiensis, *loc. cit.*, *quinque libras.*

[306] Innocent IV, *Commentaria* on c. 6. *ex forma.*

[307] *Id.* on c. 6. *dubium;* Bernard, *Casus Longi* on c. 19.

[308] Gloss on c. 19. *dubitatur;* Bohic and Panormitanus on the same canon.

[309] Bohic on c. 19, p. 176.

Bernard of Parma points out what seems to be a contradiction in two of the texts under discussion. According to Alexander III the sellers will be considered to have sinned unless there is doubt as to the value at the time of payment. They are advised not to engage in such transactions, because, as Bernard adds, it is safer to refrain from acting in cases of such doubt.[315] In the letter of Gregory IX the solution is stated differently. By reason of the doubt as to the price at a future date the sellers are to be excused. Bernard notes here that the doubt causes a more favourable interpretation to be placed on an act because we ought to be more prompt to absolve than to condemn. But the previous text says that in such doubt we must abstain from acting on account of the danger.[316] The reason for the difference seems to be that the first lays down a rule of action *ante factum*, the second a rule for judging certain acts *post factum*. Panormitanus explains it as meaning that in the first case we must refrain from acting because there is doubt whether the act is sinful or not.[317] When an act has been placed, then the most benign interpretation is to be given to it. In the confessional judgment is to be pronounced against the parties to such contracts, that is they will be obliged to restitution, because the safest interpretation is the most benign in affairs of conscience. But in the external forum the most benign interpretation is to pronounce the contract lawful and excuse the party from the penalties against usurers.[318]

The councils of the time forbid these contracts along with other forms of taking usury.[319] Moreover, some of them state clearly that the parties to such contracts are punishable, not only by the obligation to restitution laid upon them in the confessional, but by the penalties against usurers which will be inflicted by the courts. The canonists say it is an affair for the internal forum and do not, as far as has been seen, contemplate possible condemnation of these contracts in the external forum. The two norms which they laid down for judging of the legality of such transactions should, it seems, have led them to admit that the courts might be able in some cases to pass judgment. If, they say, the vendor is ready to sell at a lower price for cash, there is usury. Such is capable of proof in court, at least in certain cases, for example, when a merchant handling a certain kind of merchandise sells some of it for cash and some on credit. The other test, a much greater increase in price than any reasonable doubt could justify, could be applied also in certain cases because common opinion knew pretty nearly what the prices would be from season to season. It is evidently these cases which the canons foresee but in their condemnation they do not mention explicitly any justification of increased prices on account of doubt. The simple buying and selling on credit is condemned. The Council of Paris presided over by Robert de Courçon in 1212–1213 declares that all who sell goods *ad terminum* and increase the price on account of the delay in payment incur both the penalties and guilt of usurers.[320] The same decree is repeated by the Council of Rouen two years later.[321] About the year 1282 a provincial council held at Avignon excommunicates usurers and states that it intends the same penalty to apply to those who sell on credit at higher prices than they would for cash. No mention is made of any doubt which might excuse them.[322]

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[310] Gloss on C.14.q.4.c.9. *modium:* Si aliquis vendat merces quae modo valent quatuor et facit pactum ut ei dentur quinque ad terminum praefixum, aliud non est usura si dubium est quantum possunt merces illae ad terminum praefixum. . . . Licet si venderet longe cariori foro quam modo valeant, tunc esset usura . . . Joan. Et quod dicitur de venditione mercium intelligitur si tempore contractus non fuerat venditurus, alioquin esset usura. Bar.

[311] *Summa*, II.7.n.2, p. 207: Si tamen venderet ad terminum longe majori pretio quam modo valeat, usura esset.

[312] *Commentaria* on c. 6. *ex forma;* c. 19. *venditurus*.

[313] *Commentaria* on c. 6. *nomine usurarum;* on c. 19. *tempore contractus:* Et mens istius verbi caute notanda est, nam si statim venditurus erat pro minori pretio dummodo et statim solveretur pretium, aut si ratione dilationis longe majori pretio vendat, usurarius est mentalis.

[314] Panormitanus on c. 19.

[315] Gloss on c. 6. *dubium.*

[316] Gloss on c. 19. *dubitatur.*

[317] *Commentaria* on c. 6.

[318] *Id.* on c. 19: Glossa formaliter non solvit contrarium, et ideo dic quod in dubiis quis debet abstinere a tali contractu quia, quoad conscientiam suam et in foro animae debet fieri interpretatio potius contra eum, quia illa pars est benignior quae est tutior. . . . Sed in foro contentioso interpretatio fit in benigniorem partem et ita loquitur textus iste.

[319] Trier, 1227, can. 10 (Mansi, 23, 34);

4. *Rent charges*

For a cash payment a man buys the annual yield of a piece of land, or a fixed annual revenue, say of a hundred bushels of wheat to be paid him for a number of years, for his lifetime or *in perpetuum*, that is, the obligation continues to bind the heirs of the two parties. Is such a contract usurious? Innocent IV says that it is not, the law allowing it, provided the annual revenue will not, in the common opinion of men, exceed the returns which would have been received in buying outright a piece of land with the original investment. If there is certain to be an excess, then the contract is illicit. Some say that if the contract is *in perpetuum* it is never illicit no matter how great the annual returns may be with respect to the sum paid because here it is permitted that the parties to the contract be deceived. It may be objected that in a contract such as this the buyer is certain at the end of some years to have received more than he paid. The same author replies that though there be certitude that such will be the case this does not render the contract illicit. In a contract of sale the same certitude exists because it is inevitable that at the end of some time the fruits will exceed the cost, even deducting labour and expense, and yet these contracts are allowed. In our case we have really a contract of sale. Now the law forbids buying at a price lower than the value of the article on account of the delayed delivery. But in our case there is no selling of time.[323] Hostiensis, too, states that all such contracts are regularly lawful provided they are free from fraud and there is no deception beyond one half of the just price.[324]

Panormitanus, who tells us that this is a question of daily occurrence, gives the opinion of Innocent as that commonly held by the doctors. He adds a similar case upon which they are agreed. For eighty pounds A may purchase from B a lawsuit which the latter has against C for a hundred pounds. This is permitted because

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Trier, 1277, can. 10 (*Id.* 24, 201); Trier, 1310, can. 34 (*Id.* 25, 259); Prague, 1349 (*Id.* 26, 98); Constitutions of Coventry, 1237 (Wilkins, I, 643); Exeter, 1287, can. 24 (*Id.* II, 146).

[320] Part 2, can. 25, Mansi, 22, 827: Omnes . . . qui merces suas vendunt ad terminum ut propter ipsum terminum eas carius vendant, tam poena quam culpa usurariorum apud Deum et homines decernimus obligatos.

[321] Part 2, can. 28, *Id.* 22, 811.

[322] Can. 1, *Id.* 24, 439. The *Livres de jostice et de plet* says that those "qui vent sa chose por plus qu'ele ne vaut, a terme," are guilty of usury, XX, 14, n. 3 and 7, edit. Rapetti, p. 328. Beaumanoir also condemns these *termoiemens* and though he allows from necessity or custom certain things to be sold for payment later he does not permit the vendor to have two prices, one for cash and one for credit. He admits that he has never seen anyone condemned in court or make restitution of what he obtained in this way though it is usury in the eyes of God. *Coutumes de Beauvaisis*, n° 1924, 1927, edit. Salmon, II, p. 471–473.

[323] *Commentaria* on X.V.19.c.6. *ex forma*.

[324] *Commentaria* on X.V.19.c.6. *nomine usurarum*.

here there is a real contract of sale and the buyer exposes himself to risk of loss, since the outcome of the suit is doubtful because the debtor may be reduced to poverty before the affair is settled by the courts.[325] He does not say that the fee for the defence will bring about this condition.

It was much discussed in the time of Cinus whether one might with a safe conscience retain what one had received above the cost of an annuity for life. If, he says, the annual revenues will very probably total more than the cost because the purchaser is a young, healthy man likely to live many years, then the surplus must be restored because it is a kind of usury, "nam est quodammodo usura." If, however, he is not likely to receive much more than he paid because he is old or in poor health, he may retain what he actually does receive above the cost. On account of the uncertainty which existed he is not to be esteemed a usurer.[326]

A variation of the same case is discussed by the canonists. One man buys from another a piece of land to hold as long as he lives. Upon his death it will return to the original owner. Raymund of Penafort and Goffredus hold that such a contract is usurious. Their reason is that a man hopes to live for a long time and so he hopes to receive in fruits from the land more than he paid. Such a hope makes one a usurer in conscience and before God. It is lawful, however, to exchange one piece of land for another of equal value. Hostiensis rejects this opinion claiming that in the second case also one hopes for gain. The first contract is a lawful contract of sale provided there be no fraud, the existing uncertainty justifying it. If, however, the purchaser acts with a fraudulent intention this must be revealed in the confessional.[327] This opinion is followed by Archidiaconus.[328]

In time of need the citizens of Florence have been compelled to loan money to the corporation. Later the town agrees to pay them an annual dividend of five per cent on their loans. The citizens are not allowed to demand the return of the money loaned though they may alienate their title to it. Are the citizens to be adjudged guilty of usury? It would seem very much like a pure loan at usury, but the canonists discuss it along with annuities and rent charges which under certain aspects it resembles. Panormitanus says that the modern authors teach that there is no usury because the town receives certain gain from the capital and this it refunds in annual dividends. Besides, there is no loan, strictly speaking, because the citizens have been compelled to contribute to the support of the town and also they are not permitted to demand that the capital be refunded. On its side, the corporation acts freely in granting annual payments and, moreover, it may at any time free itself from this burden by returning the principal.[329]

This had earlier been the opinion of Baldus. He lays down the principle that statutes which favour creditors and oppress debtors are illicit. If, however, they favour debtors they are lawful. In our case the statute passed by the city of Florence does favour the debtor; it prevents him from being compelled to pay the capital when it is due and also from the obligation of paying a penalty for the delay as long as he is willing to pay a certain sum annually. This law has been made to favour the city, the debtor, so that it be not compelled at once to return the whole capital. Moreover, it is not strictly a loan here because citizens are bound to contribute to a levy or collection made to support their city.[330]

We have seen the rent charges gaining the approbation of the canonists in the middle of the thirteenth century, and of such canonists as Innocent IV and Hostiensis. In spite of some resistance it is not surprising that their use became widespread though they were not officially received by the Church until 1425 when they are said to have been used for over a century, beyond all memory of man, and always considered lawful.[331]

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[325] *Commentaria* on X.V.19.c.6, Vol. VII, fol. 237ʳ.

[326] On Cod. IV.32.14; the same commentary is repeated by Baldus on the same text, fol. 83ᵛ.

[327] *Summa, de usuris*, n. 8, fol. 375ʳ. William of Rennes follows his master, Raymund, in his additions to the *Summa*, II.7.n.4, p. 209, and presumes that such contracts are usurious.

[328] *Rosarium* on C.14.q.4.c.9.n°4, fol. 240ᵛ.

[329] *Loc. cit.*

[330] On Cod. I.1.1, fol. 4ᵛ.

5. *Other transactions*

Among the many contracts considered by the canonists in discussing fraudulent methods of evading the usury laws three or four will be mentioned here because they are not simply cases for the casuists but contracts of frequent occurrence in the economic life of the time. It has been thought that they could more conveniently be placed here rather than under some of the other types of which they may be considered variations.

A man has merchandise, for example, fish at the seashore, which will bring a higher price in the city than where he lives. Another comes to him and offers him the same price as he would have obtained by taking them to the city. May he make such a contract? According to Innocent IV such a transaction is licit; there is no usury because he does not receive more than he would probably have obtained in the city markets. As one may sell somewhat higher on account of a doubt due to a difference in time, one may do so also by reason of the doubt arising from a difference in place. This holds for merchandise but not for money because in this case there would be a *mutuum* and usury.[332]

Hostiensis, who so often follows the opinion of Innocent, in this case accuses good Homer of nodding and differs from the pope's teaching. The latter's parallel of doubt due to time and to place is not valid. Moreover, it is not likely that any buyer would be willing to make such an offer unless he were in great need especially since, in order to obtain the return of his investment, he will have the labour involved in transporting the merchandise and he will also carry the risk of loss. Besides, the previous opinion opens the door to many abuses and frauds especially by the *barati*. For these reasons, the contract described must be considered usurious.[333]

The later canonists adopt one or other of these two opinions or introduce new distinctions. The opinion of Innocent IV is followed by Abbas Antiquus, contemporary of Hostiensis.[334] Joannes Andreae says that if the price is paid at the time of the sale, Innocent is correct in allowing this contract because the buyer perhaps wishes to take the merchandise to some other place. If, however, he wishes to defer payment, and Joannes says this was probably what Innocent understood, then the opinion of Hostiensis is to be held.[335] Panormitanus adopts the less strict opinion of Innocent IV and goes a step farther than Joannes Andreae. Even when payment is deferred this same opinion should be held. Such a contract is licit, provided there is no fraud, because perhaps the purchaser knows of a still better market than the one contemplated by the seller, and since he is not going to be obliged to sell for the same price as he paid he will be sufficiently compensated for his labour and risk.[336]

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[331] Bull of Martin V in *Extra. Cummunes*, III. V. c. 1.

[332] *Commentaria* on X.V.19.c.19. *venditurus*.

[333] *Commentaria* on X.V.19.c.19, *tempore contractus:* Dixit d(ominus) n(oster) quod non est usura nam quo jure potest carius vendere ratione dubii temporis, ut hic, eodem jure et ratione dubii loci. Sed non est bonum simile, salva sua reverentia. Tum quia non est verisimile quod aliquis talem emptionem faceret, nisi multum egeret, et sic per hanc opinionem daretur via figmenti, ut viderentur approbari usurariorum baratae, quod non est sentiendum. . . . Tum quia et laboris et expensarum itineris ratio est habenda. . . . Sed quandoque . . . bonus dormitat Homerus. Ego vero maxime in judicio contentioso neminem accuso, sed in poenitentiali conveniat propria conscientia unumquemque.

[334] Quoted by Bohic, *Commentaria* on X.V.19. c.19, p. 177. This Abbas, qualified as Antiquus since the time of Panormitanus, has recently been identified as Bernardus de Montemirato by S. Kuttner, "Wer war der Dekretalist Abbas Antiquus?" in *Zeitschrift der Savigny Stiftung, kanon. abtlg.* XXVI (1937), 471–489. His *Lectura* on the Decretals belongs to the years 1259–1266.

[335] On X.V.19.c.19. See Bohic, *loc. cit.*

A merchant has a sum of money which he is prepared to take to market to invest in merchandise from which he will reap a profit by transporting it elsewhere to be sold. A friend begs him to lend him the money which he will repay at a certain date plus the gain which the merchant had hoped to make. Is such a contract usurious? This time Innocent IV says that it is and will not permit it nor excuse it in the courts. He admits that others consider it quite lawful.[337] Hostiensis is again of the opposite opinion and says such is to be excused in court because it is licit provided there is no fraud and the merchant is not accustomed to loan money at usury. The borrower is bound to compensate him for the the loss which he has very likely suffered by making the loan.[338] In the case where the merchant would be obliged to go to court in order to enforce payment the gain expected would be demanded *ratione interesse* and not *ratione usurae*.

Joannes Andreae permits this excess over the principal only when a delay in payment has actually caused the lender a loss. Then he may claim *interesse* by reason of the gain which he has lost on account of the delay. But there is no delay in our case provided the borrower either pays at the time or at the date appointed. Consequently, no compensation may be asked. To permit such contracts would, he says, encourage lending at usury because one who wished to practise this could always claim that he intended to go elsewhere to invest his capital. Panormitanus reports this opinion and admits that it is the safer of the two though such contracts may in some cases be lawful, for example, if the merchant grants the loan out of his desire to help the other.[339] In this case the strict opinion seems to be the common opinion and it is held by the same authors who in the previous case supported the laxer one.

In a loan of money or of anything else the same quantity of the same kind must be repaid. Suppose a man lends money or wheat of which the value varies from the time of the loan to the time of payment. May usury be committed by demanding return of the same quantity? According to Huguccio this is not usury because if the thing is worth less, more will not be returned than was borrowed.[340] If one lends old grain to receive later the same quantity of new grain which is more valuable, one is guilty of usury, says Raymund of Penafort[341] and others who hold that there are cases in which the usurious intention is evident.[342]

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[336] *Commentaria* on X.V.19.c.19, Vol. VII, fol. 247^{r}.

[337] *Commentaria* on c. 19. *periculum:* Et ex hoc dicimus quod si aliquis paratus erat emere merces ad portandum alio vel ad servandum certo tempore, quo posset inde lucrari, et alius indigens pecuniam ad eum veniat et offerat eandem pecuniam cum lucro sperato in loco quo ire volebat et in termino se redditurum promittit, usura est contractus hujusmodi, nec scio eum excusare, licet alii contra dixerint.

[338] *Commentaria* on c. 19. *periculum* and on c. 16. *computandos.*

[339] *Commentaria* on c. 19: Hostiensis dicit quod iste est obligatus creditori ad id quod verisimiliter fuisset lucraturus. . . . Joan. And. dicit hoc dictum Host. procedere post moram commissam, sed ante moram non, quia ibi nullum est interesse, alias usurarius posset fingere se velle ire ad emendum merces ut mutuaret pecuniam sub isto colore ad usuras. Nota primo et non tradas oblivioni id quod sentit Joan. And. ex his verbis, ut etiam in contractu mutui possit peti post moram interesse lucri verisimiliter cessantis. . . . Sed an a principio possit haberi ista ratio, posset forte dici quod ubi mutuans ducitur bona intentione et potius mutuat ut serviat amico, quam in fraudem, quod tunc excusatur a peccato, licet alia opinio sit tutior.

[340] *Summa* on C.14.q.4.c.5 and 6, fol. 218^{r}, col. 2–218^{v}, col. 1.

[341] *Summa*, II.7.n.5, p. 211.

[342] Hostiensis, *Summa, de usuris*, n. 8, fol. 375^{r}; Archidiaconus, *Rosarium* on C.14.q.4. c.5.n° 1 and c. 6. n° 1, fol. 240^{v}; Bohic, *Com-*

A number of distinctions are introduced by William of Rennes,[343] and by Bohic, whose treatment of the case is typical of his method. If the wheat is not likely to be worth more at the time of payment there is no usury. If it is doubtful whether it will be more or less valuable there is likewise no usury. But if it is very likely to be worth more we must further distinguish. If the creditor did not intend to keep the wheat until the time of payment but would have consumed it then he commits usury in receiving back the same quantity of greater value. If, however, he intended storing it he would then possess wheat of a greater value at the time payment was to be made. Under these conditions he is guilty of usury only when he does not grant the debtor the right to return the loan at any time during the interval because he is presumed to wish to make a profit while the debtor undertakes the risk of storage. When he does concede him this liberty of repaying when he wishes, he acts meritoriously if motivated by charity but if his intention is to escape, at least for a time, the risk of storage he commits usury. This is a case for the internal forum alone since all depends on his intentions.[344]

Panormitanus mentions another case. According to the terms of a contract A sells B a house or anything else and then A rents it from B. There is a presumption that this transaction is *in fraudem usurarum* because the seller remains in possession of what he has sold. It is presumed that the rent which he pays is but disguised usury on a loan, the supposed sum which he has received for the property. If the buyer is a usurer the presumption is considerably strengthened and it is still stronger if he requests the other to swear that he will not reveal the nature of the contract by demanding restitution of the rent which he pays.[345] This case resembles the simulated sales which were seen above but here the usury is hidden behind a rent rather than behind the fruits of security for a loan. The solution is the same in both cases.

C. *Turpe lucrum*

THOSE who receive usury or who enter into contracts *in fraudem usurarum* can all be said to act from love of gain and their profits called *turpe lucrum*. However, in discussing the canons on usury the canonists reserve the word *usura* to such contracts and apply the term *turpe lucrum* to those who buy goods at a low price in order to sell at a higher. Only this point will be indicated here as the whole question of what constitutes honest business is outside the scope of the present article.

Two canons of the Decretum in the sections dealing with usury forbid buying low to sell high, the first to clerics,[346] the second to laymen as well.[347] A later *palea* contains the same general prohibition.[348] In particular these texts condemn the practice of buying at harvest time in order to sell later at an increased price. The canonists state quite clearly that this is not usury,[349] and make certain distinctions which permit honest business dealing. If the article bought is transported to another place or if its form is changed it may be sold above cost.[350] A man who intends to sell it as it stands and who acts principally in order to make a profit is guilty of sin. One may, however, buy more than one actually needs. It is per-

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mentaria on X.V.19.c.6, p. 173; Panormitanus on X.V.19.c.19, Vol. VII, fol. 247ᵛ.

[343] Additions to the *Summa* of Raymund, II.7.n.4, p. 209.

[344] *Commentaria* on X.V.19.c.19, p. 177.

[345] *Commentaria* on X.III.21.c.4, Vol. VI, fol. 148ʳ.

[346] C.14.q.4.c.3, a Council of Tarragona of 516.

[347] *Id.* c. 9, a text taken from a capitulary of Charlemagne though in the Decretum it is attributed to Pope Julius.

[348] D.88.c.11.

[349] Huguccio, *Summa* on C.14.q.4.c.9, fol. 218ᵛ, col. 1, *turpe lucrum:* non dicit usuram.

[350] Rufinus, *Summa* on C.14.q.3, edit. Singer, p. 341; Gloss on C.14.q.4.c.3. *vendendi;* See the commentators on X.V.19.c.19. This business is not permitted to clerics except in case of necessity. Cf. Rufinus, *loc. cit.*

mitted to sell the surplus at the current price even though this may be higher than the cost price.[351] Again, he may fear a shortage of a particular commodity and so buy a large stock of it in order that the community in which he lives may not suffer famine. If such is his intention he may sell at a price higher than the cost to compensate him for his labour. He must not, however, make an undue profit from such transactions but only enough to supply his own needs and the needs of those dependent upon him.[352] He sins grievously if he buys up all the available produce of a certain kind so that, enjoying a monopoly, he may fix the selling price to assure a large profit.[353] Restitution in all cases of *turpe lucrum* is to be made, not to the buyers, but to the poor.[354]

III. CASES WHERE SOMETHING MAY BE RECEIVED IN EXCESS OF THE PRINCIPAL

The canonists discuss a number of cases where they teach that it is permitted to demand usury or where one may receive something in excess of the capital, something *ultra sortem*. Hostiensis, with his habitual fondness for versifying, has grouped these cases in the following lines:

> Feuda, fidejussor, pro dote, stipendia cleri,
> Venditio fructus, cui velle jure nocere,
> Vendens sub dubio, pretium post tempora solvens,
> Poena nec in fraudem, lex commissoria, gratis
> Dans, socii pompa: plus forte modis datur istis.[355]

As may be seen, he has twelve exceptions to the rule that nothing may be received beyond the capital, and elsewhere he adds a thirteenth, namely the labour which has been expended by the creditor on the occasion of a loan.[356] He has already insisted that regularly nothing may be exacted in excess of the capital; but though this is generally true, he says, it does not hold in all cases.[357]

The earlier canonists group together the cases where it is allowed to take something more than the principal, but elsewhere they mention some of the other cases which Hostiensis has included in his verse. This is evidently because they do not consider them as being cases of usury at all. Bernard of Pavia, for example, says there are but two cases where usury seems to be permitted, *stipendia cleri* and *cui velle jure nocere*, to adopt the expressions of the above verse.[358] Elsewhere he admits the *vendens sub dubio*, the *gratis dans* and the *poena*. The reason seems to be that Bernard considers the first two really to be usury but permitted here for special reasons which will be seen when these cases are examined below. They constitute real exceptions to the prohibition whereas the last three are not exceptions, not being usury at all.

Laurentius Hispanus gives a list of half a dozen cases, but adds that it is not *usura* but rather *interesse*, damages, which is received above the capital. It is not gain but compensation for loss incurred.[359] The same teaching is found with Innocent IV for the seven cases he discusses.[360] Raymund of Penafort [361] and Bartholomew of Brescia [362] seem to regard all these cases as real exceptions to the laws on usury, but it is difficult to be sure. The latter states it this way: whatever is received *ultra sortem* is usury except in these cases. Elsewhere he says that whatever is in excess of the capital is usury.

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[351] Raymund, *Summa*, II.7.n.5; Bohic and Panormitanus on X.V.19.c.19.

[352] Raymund, *loc. cit.*, and the canonists on c. 19.

[353] Note especially Bohic's commentary on c. 19.

[354] Raymund, *loc. cit.*

[355] *Summa, de usuris*, n. 8, fol. 374ᵛ; *Commentaria* on X.V.19.c.16. *computandos;* III.21.c.6. *canonicas*.

[356] *Commentaria, loc. cit.*

[357] *Summa, loc. cit.*, fol. 373ᵛ: An aliquo casu ultra sortem quicquam licite exigatur? . . . Est ergo generaliter verum quod non. Hoc firmissime teneas quod non licet ultra sortem aliquid exigere. Fallit in casibus . . . here follows the verse. . . . In aliis autem casibus non licet regulariter ultra sortem quicquam recipere.

[358] *Summa*, V.15.n.5, ed. Laspeyres, p. 234: Sciendum autem quod licet omnimodis usura prohibeatur, in duobus tamen casibus permissa videtur.

The clearest exposition of what is meant by saying that in certain cases it is allowed to receive usury or to receive something *ultra sortem*, is furnished by Bohic. *Usura vera*, *pura et propria*, as condemned by divine law, may not be permitted by any human law. In no case is usury allowed, and it is not to be understood that usury is permitted in the list of cases to be discussed, repeating here the verses from Hostiensis. At first sight, he explains, there appears to be question of usury in them but in reality there is not. In these cases that which exceeds the capital is not usury but something resulting from a reasonable cause approved by canonical equity. According to this author there are no exceptions to the prohibition of usury.[363] He admits, however, that he is greatly embarrassed by one case, the *pro dote*, which really does seem to be a permission to demand usury. This point will be seen below.

Panormitanus refers to all the older cases and adds two new ones, rent-charges and *lucrum cessans*. The first of these has been already studied, the second will be treated at the end of this section. He lays down three general principles to explain all these cases. One may receive an excess over the capital when the usury which he receives is really his own property as, for example, he retains the fruits of a pledge because the pledge had been in former times unjustly taken from him; when the usury is due him under another title and he can in no other manner obtain possession; when the usury represents damages which he has suffered.[364]

Let us proceed to an examination of these cases, observing the order indicated by Hostiensis. Then an attempt will be made to group them in order to see what relation these cases have to the classical doctrine of extrinsic titles in the taking of usury.

1. *Feuda*

THE first canon of the title treating of fiefs in the Decretals provides a case which the summary describes as a *casus singularis qui alibi non legitur*. It is a letter of Innocent III addressed to the Bishop of Saint Jean de Maurienne in the year 1206. A fief belonging to this church and held by a certain man has been given to the bishop as security for a loan. Contrary to the rule which we have seen that the fruits from a gage must go toward reducing the loan, the pope declares that as long as the bishop holds the security he may receive the fruits and they will not go to diminish the debt. However, during this time the vassal will be freed from the service which he owed to the bishop and to the church on account of the fief which he held.[365]

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[359] Gloss on X.V.19.c.8. *de feudo:* Tamen omnibus praedictis casibus non dicuntur usurae sed potius interesse videtur. A list of six cases is given by Vincentius Hispanus in his gloss on Comp. Tertia. V.10.c.1. *sperantes*, Ms. Vat. *Lat.* 1378, fol. 99^{v}, col. 2.

[360] *Commentaria* on X.V.19.c.1. *plures*.

[361] *Summa*, II.7.n.2, p. 206: In quibus casibus usurae permittantur: Licet autem usura corporalis sit prohibita, sunt tamen casus in quibus est permissa.

[362] Gloss on C.14.q.3. dictum before c. 1. *quod autem:* Quaeritur an usura sit ultra sortem aliquid recipere. Et certe sit, nisi in quinque casibus. Elsewhere he indicates some of the cases listed by Hostiensis.

[363] *Commentaria* on X.V.19.c.8, p. 174: Unde breviter, in nullo casu usura est permissa, nec intelligas quod in casibus sequentibus usura permittatur. Sed quia in eis prima facie est aliquid simile usurae, usura videtur . . . aut de aliquo commodo provenienti ultra sortem, non ut pura, vera seu propria usura, sed ex causa rationabili approbata per canonicam aequitatem, et tale recipi licite potest ultra sortem, quod in multis casibus contingit.

[364] *Commentaria* on X.V.19.c.1, Vol. VII, fol. 232^{r}: Potest ergo generaliter concludi quod licite quis percipit aliquid ex mutuo ubi illud erat suum, vel alias sibi debitum, nec poterat aliter illud consequi. . . . Et generaliter ubicumque percipitur aliquid loco interesse, non committitur usura. He enumerates the cases in his discussions of canons 8 and 12.

This text is not completely singular, however. Another canon inserted in the title *de usuris* mentions expressly this exception regarding the fruits accruing from security for loan. A letter of Alexander III of uncertain date orders an abbot to deduct from the debt the fruits which he reaps from a piece of land placed in his hands as a pledge for a loan, *nisi terra ipsa de feudo sit monasterii vestri*.[366] Another letter of this same pope, which is not found in the collections, authorizes the monks of Cisoing [367] to retain, without reducing the loan, the revenue of tithes of their church which had been conceded in fief, and which they now hold as pledge for a debt.[368]

The commentators, handling the first of these texts, experienced some difficulty in finding an explanation which would free the transaction from a usurious character, and in determining exactly the scope of its application. Hostiensis accuses them of guessing and of drawing upon their imaginations in their search for a solution. John of Wales and many others hold that this exception was introduced in order that property belonging to the Church but long since conceded in fief might more easily and quickly be recovered.[369] It was allowed because of the dislike for fiefs which the Church had granted either without service or very small service attached and which she now wishes to regain. This is one explanation offered by Innocent IV though he has several more.[370] Others teach that this is a privilege *in favore ecclesiae* and that it does not apply to lay fiefs. The lay seigneur may not act in the same way with a fief which his vassal returns to him as security on a loan. This is the opinion of Laurentius Hispanus,[371] Bartholomew of Brescia,[372] Raymund of Penafort [373] and Abbas Antiquus.[374]

Innocent IV suggests that the text applies to small rural fiefs where the revenue is so small that it hardly exceeds the value of the service which the vassal is required to perform for the lord and from which he is now freed while the lord receives the revenues. As a final explanation of a text which he finds particularly knotty he says that the decretal has reference to the case where the fief was illegally held, where, for example, tithes had been conceded in fief. Such a concession was against the canons and our text provides a way of recovering these tithes without giving rise to scandal.[375] This had been held by Goffredus as a possible solution.[376]

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[365] X.III.20.c.1: Declaramus quod gageria quam de feudo ecclesiae tuae ab M. dignosceris recepisse a te potest libere detineri, fructibus non computatis in sortem, ita videlicet ut, quam diu fructus illos perceperis in sortem minime computandos, idem M. a servitio, in quo tibi et ecclesiae tuae pro feudo ipso tenetur, interim sit immunis.

[366] X.V.19.c.8. This letter is already in the *Compilatio Prima*, V.15.c.10.

[367] Near Tournai.

[368] Jaffé, 11118, dated 1164–1165, Pflugk-Harttung, *Acta Pontificium Romanorum inedita* I (Stuttgart, 1881), p. 240: Concedimus ut decimas ecclesiae vestrae quae in feodo tenentur, libere vobis liceat in pignore accipere, ita quidem ut fructus qui exinde provenerint, in sortem non debeant computari.

[369] Gloss on X.III.20.c.1. *immunis:* In hoc casu permittitur ecclesiae fructus non computari in sortem ut res illa citius perveniat ad ecclesiam. Jo.; Hostiensis, *Commentaria* on X.III.20.c.1. *fructibus:* et hoc casu permittitur ecclesiae fructus in sortem non computari, ut res ecclesiae in feudum concessa antiquitus ad ipsam facilius revertatur . . . secundum Joannem, quem et multi sequuntur; Archidiaconus has the same teaching in C.14.q.3. dictum before c.1.n^{o}1, fol. 239^{v}. Joannes Galensis composed a gloss to the *Compilatio tertia* and to the Decretals of Gregory IX. He died early in the thirteenth century. Cf. F. Gillmann, "Johannes Galensis als Glossator der Compilatio III" in *Archiv für kath. Kirchenrecht*, 105 (1925), 489–565; Schulte, *op. cit.* I, 88, 189. The gloss of John is also reported by Tancred in his gloss to the Comp. Tertia. III.16.c.1, Ms. Vat. *Lat.* 1377, p. 168, col. 2.

[370] *Commentaria* on X.III.20.c.1. *computandos:* Et est hoc forte in odium feudorum . . . nam cum non liceat res ecclesiae alienare sine necessitate . . . et feuda de gratia concedantur et contra jus est eorum revocatio.

[371] Gloss on X.V.19.c.8. *de feudo.*

[372] Gloss on C.14.q.3. dictum before c. 1, *quod autem.*

[373] *Summa*, II.7.n.2, p. 207: Sed numquid est hoc speciale in ecclesiastico feudo an extendendum est ad feuda principium saecularium, ut et ipsi in suis possint talia facere? Respondeo: credo quod speciale privilegium est ecclesiae, nec est ad feuda laicalia extendendum.

[374] Reported by Panormitanus, *Commentaria* on III.20.c.1, Vol. VI, fol. 144^{v}: Ponit hic Abbas dicens quod in odium feudorum quae constituuntur gratis ex rebus ecclesiae, seu cum modico servitio, fuit hoc inductum ut sic citius ipsa bona feudalia redirent ad ecclesiam.

The long commentary of Innocent is repeated verbatim by Hostiensis who rejects it as opposed to the facts and because the reasons alleged are mere guesses.[377] He reports all the other opinions and with apparently full knowledge of the facts and some vehemence rejects them all to adopt an entirely new explanation. His gloss on our text shows that he was perfectly acquainted with the particular fief in question and with the persons concerned, a knowledge which appears to have been wanting in the other commentators.

The opinion of Goffredus and Innocent that it was a question of a fief illicitly granted is, he shows, contradicted by the facts.[378] The theory that it was a small rural fief is rejected for the same reason. He firmly refuses to accept the teaching of those who hold that this is a special privilege in favour of the Church. If this is true, Hostiensis sees that the logical conclusion is that the Church exempts herself from the laws on usury but obliges all others.[379] This cannot be a special privilege, for if it is usury, which is condemned by divine law, then the pope may not grant any special privilege or dispensation to practise it and besides he would be less likely to grant such to clerics than to laymen.[380] It is true, he admits, that no text expressly permits the same procedure in lay fiefs, but the thing itself, the retaining of the fruits from the fief, is in itself either licit or illicit. If it is licit, then it is also permitted in the case of secular fiefs because where there is the same reason, the same law applies. If it is illicit, then such a practice is much less to be allowed to clerics than to the laity because the sin of usury is more execrable in them and many things are permitted to the layman which are prohibited to the cleric. Consequently, we must conclude that the exception admitted by this text is not restricted to ecclesiastical fiefs but applies to lay fiefs as well.[381] From the very tenor of the decretal it is clear that it is not a privilege but a juridical response to the question proposed, namely: Does such a practice constitute usury or not? Some hold that it does and that the pope gives a dispensation. Hostiensis rejects this opinion.[382] The pope does not permit usury in certain circumstances but in a particular case decides on certain grounds whether the revenue is to reduce the capital. It is a case wherein there is no sin of usury and it is not a special privilege to take usury.[383]

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[375] *Loc. cit.:* Vel hic vocat feudatarios rusticos qui teneant aliquas possessiones quarum ratione debent aliqua servitia exhibere et non excedant multum fructos valorem servitii. Vel dic haec decretalis et consimiles loqui in eo casu quando illicite tenent, scilicet quia in feudo datae fuerunt in casu illicito, sicut decimae in feudo darentur, quae tamen sine scandalo recuperari non possunt.

[376] Hostiensis, *Commentaria* on X.III.20.c.1. *insinuatione:* Goff(redus) vero notat quod forsitan hic fuerat male assignatum feudum.

[377] *Ibid.:* Secundum dominum nostrum cujus est haec tota glossa. . . . Sed non placet haec quia nec veritatem facti continet . . . nec sufficientes sunt rationes quae ex divinationibus insurgunt.

[378] *Ibid.:* Sed hoc de facto scio falsum esse quia castrum de quo hic loquitur antiquissimum feudum erat.

[379] This difficulty had been anticipated by Innocent IV who preferred the explanation that it was a small rural fief where the revenue about equalled the service, and he adds: Alioquin esset contra mandatum Dei. *Commentaria, loc. cit.*

[380] *Loc. cit.:* hoc non puto verum, nam si usura esset, cum sit utriusque testamenti pagina reprobata . . . non posset in hoc etiam ipse papa privilegium dare . . . certe et minus dandum hoc privilegium clericis quam laicis.

[381] *Summa, de usuris,* n. 8, fol. 373v: Quod dicunt quidam speciale in feudo ecclesiastico: et est verum quod in alio non reperitur expressum. Moveor tamen, quia aut licitum est aut illicitum; si licitum, ergo et in laico, quia eadem ratio, ergo idem jus; . . . Si illicitum, multominus debet concedi clerico quam laico. . . . Ergo in saeculari feudo hoc dico locum habere.

[382] *Ibid.:* Praeterea, ex tenore decretalis primae, de feudis, apparet quod non est privilegium sed ad consultationem factam, respondetur de jure. Item, aut est usura aut non. Si est, quomodo papa privilegiabit aliquem contra praeceptum Domini? Dicunt quidam quod hoc est usurarium quia prohibitum, sed non placet.

But the question still remains: Why is an exception made in this case? On what grounds did the pope decide that the practice upon which he was consulted was not usurious? How does this case differ from a loan on security? The solution propounded by Hostiensis is a juridical one and so far as has been discovered he is the first to attempt such an explanation of this text. The pope, he says, decided as he did because of the very nature of a fief. This is freely conceded to the vassal by certain ceremonies, the ownership remaining with the seigneur and the vassal promising certain services to him, services determined at the time of the grant.[384] The vassal does not acquire the dominium but only the use; he has not the *dominium directum* but only the *dominium utile*.[385] The reception of a fief naturally obliges the vassal to make some return. When he gives it back to the lord as security on a loan the thing reverts to its former juridical status, that is, it becomes the property of the lord and hence the revenues received from it do not go toward reducing the debt for which it was placed as security. All is now as if there had never been any concession in fief. These are the grounds for the decision given in the decretal and these same grounds exist just as much in a secular as in an ecclesiastical fief.[386]

This doctrine is adopted by Panormitanus who says that in his time it is the more commonly held. He explains it briefly thus: The lord of the fief retains the *dominium directum* and when the fief is returned to him as security, by the will of the vassal the *dominium utile* which he had received is also surrendered so that the lord has complete ownership. In retaining the revenues he does not retain the revenues of another's property but of his own. Since in the meantime the vassal is freed from the services which he owed, the contract which formerly existed has been suspended for a time.[387] Following the same author, the other explanations are rejected as worthless. That opinion which would consider this text a special privilege in favour of the Church, he condemns as unsafe.[388] As a matter of fact several explanations might be offered to account for the fact that the three known texts touching this problem all apply to ecclesiastical fiefs and that no mention is made of secular fiefs.

The authors, we have seen, are divided on the question of whether the decision of this text is to be extended to secular fiefs. In any case it spoke only of a fief.

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[383] *Commentaria* on III.20.c.1. *insinuatione:* dicas ergo quod quando quaeritur utrum fructus computandi sint in sortem, potest papa declarare quod non in casibus et ex causa.

[384] *Ibid.:* Est autem ratio, quae movit papam, natura rei feudatis. Nam feudum est alicujus rei collatio, investitura interveniente, sic concessae seu datae gratis alii, quod dominium penes concedentem remanet, cujus rei occasione recipiens et haeres ejus, quando in ipsum transit concedenti domino ad id, de quo et quousque convenit ac feudi natura requirit, juxta pacta et secundum diversarum regionum consuetudines obligatur.

[385] *Summa, loc. cit.:* Vasallus, secundum dominum meum, non est dominus quamvis habeat utilem actionem, vel secundum alios, non est major dominus directo sed utiliter tantum. The *dominus meus* refers to his master in Civil Law at Bologna, Jacobus Balduini, †1235.

[386] *Commentaria, loc. cit.:* Nota igitur quod feudum obligat vasallum naturaliter ad antidora . . . et quando vasallus obligat rem sibi datam in feudum domino, patet quod revertitur res ad naturam pristinam, et ex his motus est papa ad declarandum quod fructus percepti a domino rei non computantur in sortem. . . . Quae ratio fortius etiam in saeculari quam in ecclesiastico feudo locum habet.

[387] *Commentaria* on X.III.20.c.1: Nam cum dominium directum remanserit penes dominum, si utile revertitur ad eum ex voluntate vasalli pignorantis, consolidatur ipsum dominium utile cum ipsa proprietate. Unde non dicitur percipere fructus ex aliena re sed ex propria. Nam vasallus interim liberatur ab obligatione qua domino tenetur. Dissolvitur ergo interim seu suspenditur obligatio inter eos contracta. Et ratio haec facit ut sit idem in laico, et haec lectura est communior.

[388] *Ibid.:* Sed haec lectura non est bona nec tuta. . . . Textus dicit, "declaramus," et sic non ponit jus novum.

Some authors wish to limit its application to the fief, others to extend it to other land holdings as well. Raymund of Penafort tells us that some wish to include the *coloniae rusticorum* which are not fiefs. He does not approve of this and says if a church receives as security the holdings of one of her *coloni*, the revenue derived from it must be deducted from the loan. The privilege granted by the Church is restricted to the fief.[389] Hostiensis on two occasions refers to this passage from Raymund, both times to reject its teaching on account of the grounds upon which it is based, namely that the privilege concerning the fief is in favour of the Church and hence is not to be extended to other cases. As we have seen, this is for Hostiensis saying that the privilege excuses an otherwise usurious practice from being usurious.[390]

Does the text apply to emphyteusis? Hostiensis says that perhaps it does because the same reason exists as for the fief. Or, he says, there may be a difference because the holder does not receive such a holding free of charge as does the vassal, but pays a certain sum of money for it. Unable to decide, he says the pope should be consulted.[391]

2. *Fidejussor*

Two letters of Lucius III addressed to the Bishop of Ely and the Archbishop of Canterbury, and inserted in the Decretals,[392] speak of cases where some parties have gone security for clerics who had contracted debts to Bolognese merchants. Those who guaranteed payment are now being molested by these money lenders and already the debts have been augmented because the clerics in question will not pay. In both cases the pope orders the bishops to examine the affair and if these facts are verified the clerics are to be compelled to compensate the others, the the *fidejussores*, both for the debt and all other *damna* and *accessiones* which they have suffered. The word usury is not used but it is clear that the money lenders had increased the original debt on account of accumulating usury due on the loans.

These letters provide the canonists with another case where it is permitted to receive something in excess of the capital. When one person goes security for another he can demand from the latter usury which he may have been obliged to pay to a third because the placing of security for the other has placed him in the necessity of contracting a loan. He may demand recovery also of anything else which he has lost on account of the transaction. As Innocent IV says, we have not here a case of usury because the *fidejussor* does not make a gain but only receives compensation for damages. The canonists and civilians all agree that this transaction is not usurious.[393]

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[389] *Summa*, I. 15, p. 129: Hoc autem quod dictum est de feudis, volunt quidam extendere ad colonias rusticorum; quod non approbo. Immo dico quod si ecclesia recipit coloniam coloni sui in pignore, debet fructus in sortem computare, deducto jure et laboribus et expensis, quia super hoc privilegium nullum video ecclesiae concessum.

[390] *Summa, loc. cit.:* Notat Ray(mundus) quod quidam volunt extendere . . . quasi dicat hoc privilegium excuset ab usura quod non puto. See also *Commentaria, loc. cit.*

[391] *Summa, loc. cit.:* Quod ergo de emphyteuta? Et forte idem quia eodem ratio; vel dic quod dissimile est quia non ita gratuita recepit sicut vasallus cum pro intuitu donaverit certam pecuniae quantitatem; vel dic papam super hoc consulendum.

[392] X.III.22.c.2 and 3.

[393] Innocent, *Summa* on X.V.19.c.1. *plures:* Ultra sortem autem licet accipere fidejussori qui usura solvit quia non est sibi lucrum sed interesse; on c. 16. *computandos:* Sic etiam non est usurarius fidejussor repetens usuras quas solvit pro debitore, vel si accepit pecuniam sub usuris ut satisfaciat creditori apud quem fidejussit; Hostiensis, *Commentaria* on the same texts; *Summa, de usuris*, n. 8, fol. 374r; Raymund, *Summa*, II.7.n.2, p. 206: quia non sunt usurae quantum ad ipsum fidejussorem sed potius interesse, id est, non lucrum sed vitatio damni; Gloss on C.14.q.3. dictum before c. 1, and on X.V.19.c.8; Bohic, *Commentaria* on c. 8 and Panormitanus on c. 1 and 8 of the same title; Baldus, on Cod. Just. I.1.1, fol. 4v.

One difficulty arose — the debtors saw to that. They could object that since the taking of usury was forbidden those who had gone security for them had, in paying usury, paid something that was not owed, so that they, the debtors, could not be held responsible for such imprudence. They should have refused to pay usury and if the judge tried the case an *exceptio* of usury should have been made. Even if this were done and yet the court compelled them to pay usury the fault lies with the judge and not with the debtor. If he did not introduce the *exceptio* it is his own fault because the debtor has given him no mandate to pay what was not due. If he had sworn to pay usury to another he should have demanded of the competent authority absolution therefrom and then placed the *exceptio*. If he kept his oath and paid usury he should himself have demanded its return from the one to whom it was paid. Some canonists hold that only when he has sworn to pay usury has the *fidejussor* the right to demand compensation from the debtor.[394]

3. *Pro dote*

A FRAGMENT of a letter of Innocent III which Raymund of Penafort placed among the texts treating of usury provided a third case where it is permitted to receive something in excess of the capital, where the revenue from a pledge does not diminish the debt. The case is this: a wife's father is unable to turn over to the husband the dowry upon which they had agreed. Instead he gives him a piece of property as security. The pope says that he does not believe that the fruits which it yields should reduce the debt, the dowry. The reason he gives is that often the revenue of the dowry itself is not sufficient to support the *onera matrimonii*.[395]

The canonists all recognize this as an exception to the rule already studied that the revenue from a pledge must be deducted from the capital, and they are much concerned with the reason for the exception. They examine several cases connected with it because here, as Innocent IV tells us, many were employing ruses to cover up usurious practices.[396]

An early gloss on this canon says that the rule is that the revenues of a dowry go to support the *onera matrimonii*, which requires that the husband be put in possession of it. Since in our case this is not done but some other property replaces it, its fruits should be used for the same purpose.[397] Goffredus argues that the *onera* would have been sustained by honest profit made from the dowry. Instead of the latter a pledge is given and it should support the home.[398]

Hostiensis, while admitting that this explanation follows closely the text, is not satisfied with it. There is another reason, he says, arising from the very nature of a dowry. This must at all times be kept secure and intact. If it were consumed, as it would be if the revenue of the security given in its place went toward diminishing the dowry, then the public good would be injured because this requires that the dowry be protected.[399] Besides, the reason given by Goffredus may be applied to a loan. For if I receive a field as security for fifty pounds which I lend and from the profit of which I intended to support myself, the field replaces the money and I may support myself out of its fruits instead of their going to extenuate the capital. But this, as we have seen, is forbidden; the fruits must be deducted from the loan. The reason is that a *mutuum* is usually the contract in this case and the canons on usury apply. In the case of a dowry there is no *mutuum* and so the transaction is not governed by the same rule. Finally, in the case of a dowry the public good is involved and it is not so in a loan.[400] Hostiensis does not seem quite satisfied with this explanation and elsewhere he states that the reason for this exception is that the husband has the dominium of the dowry and so the revenues of what is substituted for it belong to him.[401] Innocent IV says that the revenue of the security is received, not as usury, but as *interesse*, as damages for the loss which is sustained from non-payment of the dowry which is owed.[402]

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[394] Gloss on X.III.22.c.2. *indemnem*. Goffredus seems to hold that the debtor is bound to make good the usury paid by his bondsman only when the latter had promised under oath to pay: Repetit fidejussor a debitore usuras et accessiones quas occasione debiti habuit necesse solvere creditori, forte quia juraverat. Cf. Hostiensis, *Summa*, n. 8, fol. 374ʳ.

[395] X.V.19.c.16: Sane generum ad fructus possessionem, quae sibi a socero sunt pro numerata dote pignori obligatae, computandos in sortem non credimus compellendum, cum frequenter dotis fructus non sufficiant ad onera matrimonii supportanda.

[396] *Commentaria* on X.V.19.c.2. *redimendum*.

[397] Gloss on X.V.19.c.16. *onera*.

[398] Hostiensis, *Summa, de usuris*, n. 8: Ideoque cum dotali pecunia praedium obligetur sicut ex aliquo honesto lucro pecuniae dotalis, si habentur, sustentarentur onera matrimonii . . . sic ex fructibus praedii quod in locum pretii succedit . . . secundum Goff(redum).

[399] *Ibid.*: Et huic rationi consonat textus. Sed certe reddi potest alia ratio, haec scilicet ut dos remaneat salva mulieri, quam alias consumi contingeret et sic utilitas publica laederetur.

This text presents the greatest difficulty, says Bohic, for those who hold that usury is never allowed though something over the capital may be received in certain cases, not as usury but as *interesse*. He explains the exception as follows: The revenues which are received from the pledge are not received on account of the dowry which is held by the wife's father, which would constitute a case of usury, but on account of the *onera matrimonii* which the husband must support.[403] One feels sure that Hostiensis would have opposed to this line of reasoning the same charge which he levelled at Goffredus, that any case of a loan on security might be in the same way excused from usury. Bohic is himself not quite content with his solution and presents an alternative one. He invokes the title *damnum emergens*. The revenues received are to indemnify the husband for the loss he sustains from the deferred payment of the promised dowry.[404] This is the same as the brief statement made by Innocent IV that the revenues represent damages and Panormitanus adopts this opinion also. The fruits go to the husband as *interesse*, as compensation for loss suffered by the debtor's delay.[405]

The revenue from the security may be received until the dowry is paid, and if it is not paid, as long as the husband is obliged to support the *onera*. The text of the canon indicated this clearly and all the canonists accept it. They add that the husband must actually support the *onera* or his rights over the revenue cease.[406] When he no longer has to support them, then the revenue begins to reduce the capital. Innocent IV points out that this will be from the time of his death and that from this moment, the wife, if she holds the security, will deduct its revenue from the amount of the dowry.[407] But she will hold the security only when it has been surrendered to her by the husband's heirs. Hostiensis considers the question from the point of view of the rights of the heirs over the security. The privilege of our canon, he says, extends to them as long as they are bound to support the widow, that is for one year after her husband's death, because during that time they are not bound to hand over the dowry.[408]

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[400] *Ibid.:* Prima ratio etiam mutuo adaptari potest. Nam si recipio praedium tuum obligatum pro decem libras quas tibi mutuo et de quarum lucro vivere proponebam, praedium succedit loco pretii, et tamen fructus computantur in sortem, *infra*, *eodem*, c. 2. Sed hoc est quia mutuum contrahitur in quo regulariter et non in alio contractu habet locum hoc quod dicitur de usura . . . nec versatur ibi publica utilitas, porro in promissione dotis versatur . . . nec mutuum aliquod est contractum et ideo fructus in sortem minime computantur.

[401] *Commentaria* on X.V.19.c.16. *cum frequenter:* Quia fructus rei obligatae pro dote debent cedere lucro viri qui et dotis dominus est.

[402] *Commentaria* on X.V.19.c.16. *computandos:* recipit enim fructus pro interesse et non pro usura.

[403] *Commentaria* on X.V.19.c.8, p. 174: Illud tamen quod facit majus dubium in isto articulo est casus ille *infra*, *eodem*, c. *Salubriter* (c. 16). Sed dic quod ibi proprie esset usura si fructus illius possessionis perciperentur a genero intuitu pecuniae detentae a socero; sed hoc est falsum, quia non intuitu pecuniae dotalis quam socer detinet, sed intuitu oneris matrimonii quod gener sustinet.

[404] *Ibid.:* Vel potest dici quod dicti fructus percipiuntur a genero in recompensatione damni.

[405] *Commentaria* on X.V.19.c.16, Vol. VII, fol. 243ᵛ: Fructus . . . cedunt ipsi creditori et hoc quia succedunt loco interesse quia maritus patitur in non recipiendo dotem promissam.

[406] Gloss on X.V.19.c.16. *onera:* Ad hoc autem ut maritus lucretur fructus rei dotalis, requiritur ut sustineat onera matrimonii.

[407] *Commentaria* on X.V.19.c.16. *computandos:* Dicimus quod quamdiu maritus tenetur alere uxorem, tamdiu potest uti fructibus non computandis in sortem, sed postquam non debet

A case arises out of this. Here the husband had received the dowry from the wife's father. At his death his heirs have not the money to remit to the widow as her dowry at the end of a year. They give her a piece of property as security for the dowry owed. In this case, the canonists say, the text under discussion does not apply; the revenues of this pledge diminish the dowry, the reason being that the *onera matrimonii* no longer exist.[409] Panormitanus gives this as the common opinion.[410]

The same author goes on to say that the statutes of many places have decreed that when the husband's heirs do not remit the dowry to the widow they must pay her a certain sum which will support her. He asks whether such statutes are valid, whether the widow may with a safe conscience receive such payments, and relates that he has often seen doubts arise concerning this practice. John of Legnano,[411] in his commentary on the *Clementinae*, says that such statutes are null and void because the widow does not support the *onera* and consequently should not make a gain from the money which is owed her. She should take legal steps to enforce its payment. Panormitanus takes the opposite view and says the answer to the problem depends upon the answer given to another question: Is the husband's heir bound to support the widow until he pays the dowry? Though, he says, there are many opinions on this question he prefers that which holds that if she has no other property, the heir must support her. He invokes the authority of civilians, Bartolus [412] and Accursius and also of William Durand. Applying this answer to the previous question, if we have a case where the widow has no other property, the heir is bound to support her and statutes are valid which fix a certain sum of money to be paid. If we have the case where the widow has other means of support, the heir is not obliged to contribute and statutes which compel him to do so are to be held as invalid.[413]

Another case in connection with the dowry gave rise to different opinions among the canonists. The father promises his son-in-law a sum of money as a dowry for his daughter. Instead of turning over the money, he places it somewhere as a cash pledge and promises to pay him in the meantime a certain rate of usury, so many pence per pound each month. Is this lawful? [414] Joannes Andreae claims that it is not, and that those who say that it is must find such a case expressly stated in the law. The latter contains only the text which we have been discussing and which makes an exception to the decrees on usury. It permits only the revenues of a

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eam alere, non debet fructus accipere. Unde credimus quod si mulier habet pignora dotis suae post mortem mariti, quod debet fructus illos in sortem computare.

[408] *Commentaria* on X.V.19.c.16. *supportanda:* Et extenditur hoc privilegium ad maritum quamdiu tenetur uxorem alere, non postea, secundum dominum nostrum (Innocent IV). Ergo et ad haeredes mariti quamdiu tenentur uxorem quondam mariti alere, hoc est usque ad annum post mortem quia interim non coguntur dotem tradere.

[409] Hostiensis, *Summa*, n. 8: Quid in converso casu ut ponamus, soluto matrimonio, haeredes mariti obligaverunt mulieri possessionem aliquam pro dote sua, quia non habent unde solvant; numquid fructus computantur in sortem? Dicas quod sic.

[410] *Loc. cit.*

[411] Joannes de Lignano taught at Bologna and died in 1383. See Schulte, *op. cit.*, II, 257.

[412] See the whole of Bartolus' *Consilium 128*, Vol. X, fol. 32ʳ.

[413] Panormitanus, *loc. cit.*

[414] *Ibid.:* Pater puellae promisit certam quantitatem pecuniae pro dote suo genero et praestitit cautionem de numeranda certo tempore et promisit dare interim certos denarios pro libra quolibet mense.

piece of property given as security since here the gain is not certain, because the possession may not provide any, whereas in the case here proposed for solution, the gain is certain, being a fixed sum promised by a contract. It is no objection that this sum is to support the marriage because a decretal has decided what is to be done in such a case, namely that the dowry is to be placed with some merchant and the honest gain from it will support the marriage.[415]

Antonius of Budrio [416] permits the husband to receive such payments as *interesse*, damages, resulting from delayed payment of the dowry. The title *lucrum cessans* also entitles him to take what he would likely have gained if he had been paid the dowry at once. Calderinus,[417] while admitting that the opinion of Joannes Andreae is safer, holds that the opposite opinion is closer to the truth. Such a contract is licit and the objection of Joannes does not stand because the text is quite general, making no distinctions, and allows gain from the revenues of the property placed as security. Sometimes the revenue is as certain here as in the case proposed. Panormitanus also admits this transaction, a certain annual payment will be made until the dowry itself is turned over, provided the husband is engaged in business or is in the habit of placing his money with merchants. He does not receive the money on account of a loan, nor on account of the delay, but in order to support the marriage and it may be considered as *interesse*, compensation for damages.[418]

4. *Stipendia cleri*

BESDES the texts which we have seen making an exception for an ecclesiastical fief, the canonists found a somewhat similar canon upon which they constructed another case where it is permitted to receive something in excess of the capital. It resembles that of the fief but presents some new aspects.

In 1163 the Council of Tours, presided over by Alexander III, condemns clerics who retain the revenues of pledges placed with them for loans. They are ordered to deduct the revenues from the capital in all cases unless the pledge is an ecclesiastical benefice which they are recovering in this way from laymen.[419] Here again there seems to be a special privilege in favour of ecclesiastical property. If a layman, holding a benefice belonging to the Church, gives it to the Church as security for debt the revenues do not diminish the debt, or, in other words, the Church receives what, in all other kinds of security, is considered usury. What is the reason for the difference? May the privilege of this text be extended to secular property?

Bernard of Pavia says that it is a remarkable ruling and is allowed because the cleric does not retain the revenues to make gain but in order to redeem the benefice.[420] The Gloss on the Decretum states that this is a privilege *in favore ecclesiae*.[421] Bernard Bottone in his *Casus Longi* [422] has the same teaching but in the Gloss to the Decretals he extends it to secular property as well.[423] He adds that there is no usury because the layman unjustly held a possession belonging to the Church and so the cleric really receives revenues from what is his own. But he seems to require as a condition for the use of this privilege that there is no other way of recovering the benefice.[424] Innocent IV assimilates this case to that of an ecclesiastical fief and experiences equal embarrassment in satisfactorily explaining the exception to the laws on usury.[425] Raymund of Penafort requires a whole series of conditions for the use of this privilege. The possession must be unjustly or forcibly held by the layman and the cleric must use the method indicated in the canon, not on account of gain, but to redeem ecclesiastical property, and then only when all other methods of recovering it have failed.[426]

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[415] X.IV.20.c.7, Letter of Innocent III of 1206 to the Archbishop of Genoa.

[416] Professor at Bologna, died 1408. See Schulte, *op. cit.*, II, 289.

[417] Joannes Calderinus, c. 1300–1365, pupil of Joannes Andreae, taught at Bologna during the years 1330–1359. See Schulte, *op. cit.*, II, 247.

[418] *Loc. cit.:* Puto etiam quod a principio possit conveniri cum socero de percipiendo, aliquid annuatim usque ad solutionem dotis, dummodo sit solitus mercari, vel ponere pecuniam apud mercatorem, cum iste non capiat pro mutuo, nec pro dilatione data, sed ut sustineat onera matrimonii et sic potius capit ut interesse. His long commentary on this canon gives the various opinions of the canonists on the problems concerning the dowry.

[419] X.V.19.c.1: Nisi forte ecclesiae beneficium fuerit quod redimendum ei hoc modo de manu laici videatur.

[420] *Summa*, V.15.n.5, ed. Laspeyres, p. 234: Ubi laicus habet ecclesiae beneficium possunt clerici fructus illius beneficii percipere ultra sortem, quod mirum videtur. . . . Sed hoc non fit lucri causa sed ut res eo modo a manu laici redimatur.

[421] On C.14.q.3. dictum before c. 1. *quod autem*.

[422] *Casus Longi* on V.19.c.1.

Hostiensis requires these same conditions.[427] It is not a case of usury, he says, because the cleric receives the fruits of what really is his own.[428] This is really his explanation of this privilege, the benefice is unjustly held by the layman, as we shall find him stating a bit later. But, having given this explanation, he proceeds to offer other interpretations of the regulation, by saying that the property is really a fief and so it falls under the ruling applied to such, or it was a fief illegally conceded or one in which the services attached about equalled the revenues. In other words, Hostiensis here enumerates the various explanations which in treating of the exception for fiefs he had condemned as guesses on the part of other canonists.[429]

The great canonist does not fail to see, however, that if this text is a privilege in favour of the Church, then it is a permission to practise usury. If it is not usurious then the privilege must be extended to secular property as well. If clerics may use the method here indicated to obtain what really belongs to the Church, it cannot be usurious. Consequently, the same is to be permitted to laymen, for where there is the same *ratio* there is the same *jus*. Anyone, he concludes, may recover his property from an unjust possessor by receiving it as security for a loan and retaining the revenues without reducing the loan.[430] Moreover, a cleric who receives as security an ecclesiastical possession which was not his own benefice may not make use of the privilege of our text.[431] This last point is also to be found in the Gloss, which, however, allows the cleric to receive in the name of the Church the revenue of ecclesiastical property though it had not been assigned to him as a benefice. The revenues do not enrich him since he had suffered no loss, but they go to compensate the Church for the possession unjustly held by a layman.[432] Panormitanus does not dwell upon this text, but it is clear that he considers it a general ruling laid down for the recovery of property, ecclesiastical or secular, from an unjust possessor.[433]

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[423] On X.V.19.c.1. *beneficium.*

[424] *Ibid.:* Hoc ita potest intelligi: puta laicus aliquis injuste detinet possessionem . . . nec est usura cum tantum suum recipiat quia sic forte possessio ad ecclesiam reverteretur hoc modo quia forsitan alias non poterat recuperari.

[425] *Commentaria* on X.V.19.c.1. *beneficium, redimendum.*

[426] *Summa*, II.7.n.2; I. 15 *de decimis.*

[427] *Commentaria* on X.V.19.c.1. *beneficium:* Hoc potest intelligi quando laicus injuste detinet aliquam possessionem quae est clerico in beneficium assignata, a quo nec aliter recuperari potest. See also on c. 16 and *Summa, de usuris*, n. 8.

[428] *Ibid.:* Nec est usura quia quod suum est percepit fructus.

[429] *Ibid.:* Vel intelligitur hoc de beneficio, id est, de feudo quod tenetur ab ecclesia quod si ipsa recipiat obligatum, non computat fructus in sortem. . . . Vel intelligitur quando servitium quod ratione feudi facit quasi aequiparatur valori fructuum, vel quando feudum datum est in casu illicito, alioquin esset contra illud evangelicum.

[430] *Ibid.:* Et idem esset in laico si vellet possessionem redimere propriam de manu injuste detentioris cum fructus illius rei sui sunt. Secus si esset possessio aliena, quia tunc fructus essent computandi in sortem sicut et clericus computare deberet si non esset sibi possessio pro beneficio assignata. Alanus had earlier extended the same privilege to laymen. See gloss to Comp. Prima, V.15.c.1. *clerico*, Ms. Vat. *Lat.* 1377, p. 176, col. 1: Idem intelligo etiam de laico quod hoc modo licet sibi possessionem suam redimere de manu injusti possessoris.

[431] See preceding note.

[432] Gloss on X.V.19.c.1. *beneficium:* Idem esset de clerico si possessionem ecclesiae quae non fuit sibi pro beneficio assignata taliter in pignus reciperet, nisi de licentia ecclesiae hoc faceret quasi praecipiendo eos nomine ecclesiae.

Some of the authors state expressly that this canon applies not only to a benefice in the strict sense, some church property, the revenues of which are assigned to a cleric as his living, but also to tithes and other things having a sacred character. Such, they say, may be redeemed in this way and, moreover, there is no sin of simony.[434]

Another text, apparently unknown to our canonists, makes a particular application of this rule to the *advocatia*. It is a letter of Honorius III of 1221 and is to be found in the *Compilatio Quinta*.[435] Addressing the Archbishop of Cologne and his suffragans he reveals that the *advocati* of churches are in the habit of giving their offices (advocatiae) to others as security for debt and in this way cause the churches a great injury. To prevent this, the pope permits the bishops to receive the *advocatia* as security for debt and frees them from the obligation of deducting the revenues received from the debt. In the meantime, however, the *advocati* are to be exempted from the services which they owed in virtue of this office.[436]

This text witnesses to the Church's efforts to recover from the hands of laymen, not only the ecclesiastical property itself, but the rights, particularly the *advocatia* which they had acquired over churches. Some councils of the fourteenth century also refer to the *jus patronatus* in connection with usury. When a piece of land, to which this right is attached, is placed as security for debt, the right of presenting the cleric, the *jus praesentandi*, remains with the owner of the security. Though revenues from the pledge are to reduce the capital, the right of presenting the administrator is a spiritual right which cannot be estimated in money and is not to be computed with material things.[437] We see here also the attempt to prohibit all transactions with the *jus patronatus*.[438]

5. *Venditio fructus*

HERE the revenues of a piece of land are sold for a certain length of time. It is the rent charge which has already been studied. Though the purchaser may receive more from the revenues than he paid and so has received something in excess of the capital, there is no usury. It is a contract of sale and the profit is allowed on account of the uncertainty.[439]

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[433] *Commentaria* on X.V.19.c.8. Bohic on this same canon follows closely the commentary of Hostiensis.

[434] Raymund, *Summa*, I, 15 *de decimis*, p. 128: Quid si miles injuste detinet decimas, nec potest ecclesia recuperare ab eo, numquid poterit eas redimere sine periculo simoniae? His answer is affirmative; Hostiensis, *Summa, de usuris*, n. 8: Si forte illud velis intelligere de decima vel de alio beneficio spirituali, non contradicat *supra, de decimis*, c. fin. (X.III.30. c.35); *Commentaria* on X.V.19.c.1. *beneficium:* Idem esset in decimarum fructibus de licentia ecclesiae ad quam spectant.

[435] III.12.c.1, ed. Friedberg, p. 172.

[436] *Loc. cit.:* Cum sepe contingat, advocatos advocatias, quas in ecclesia obtinent, aliis obligare titulo pignoris, in ecclesiarum ipsarum non modicam lesionem, nos . . . concedimus ut si advocati ecclesiarum vestrarum advocatias suas vobis obligare voluerint pignori, vos eas recipere valeatis, nec fructus provenientes ex eis in sortem teneamini computare; hi autem qui eas obligaverint a servitio in quo vobis pro advocatiis tenebantur, interim sint immunes. This *advocatia* is the German *Vogtei* and differs from the English *advowson.*

[437] Mainz, 1310, Mansi, 25, 320: Statuimus ut si quis praedium suum cui jus attinet patronatus cuiquam obligaverit indistricte, jus praesentandi apud ipsum obligantem resideat, cum tale jus aestimari non possit, et ergo in sortem nequeat computari; Prague, 1349, can. 34, *Id.*, 26, 86.

[438] Cf. P. Thomas, *Le droit de propriété des laïques sur les églises et le patronage laïque au moyen âge* (Paris, 1906).

[439] Hostiensis, *Summa, de usuris*, n. 8: Quando vendo fructus ad tempus, licet enim plus satis percipiat emptor de fructibus, non tamen tenetur mihi aliud sarcire ratione incertitudinis; *Commentaria* on X.V.19.c.16. computandos. Bohic, *Commentaria* on X.V.19.c.8. See above, p. 120 ff.

6. *Cui velle jure nocere*

The interpretation of a text from Saint Ambrose,[440] inserted in the Decretum, caused the canonists much difficulty. It says, *ubi jus belli, ibi jus usurae*, and urges the demanding of usury from those whom one wishes to injure, for usury may legitimately be used as a weapon against those whom one may injure by the use of arms. He who may be killed but whom one cannot conquer by arms may be oppressed by the exacting of usury and by this means vengeance may be wreaked without taking up arms. Those against whom one may wage a just war may be compelled to pay usury.[441] Gratian interprets this text literally and without hesitation as meaning that usury may be demanded of certain persons.[442]

Commenting upon this canon, Rolandus says that laymen may exact usury from heretics, infidels and others who openly attack the Church. It is not to be exacted in order to make gain but to bring such persons into the true fold.[443] Clerics, however, may not act thus because to them is denied the right to bear arms.[444] The teaching of Rufinus is much the same; heretics and Saracens are examples of those of whom usury may be demanded. The motive is to harass those whom we cannot subdue by arms so that they will either become Christians or at least leave the Church in peace.[445] Bernard of Pavia mentions only the Saracens.[446]

The commentary of Huguccio seems to be the first witness to an attempt to restrict the sense of this canon. It is not usury that we are allowed to demand of such persons but we may force them to pay high rent, high prices for food, etc., in order to harass them.[447] Or the text refers to the privilege which the Jews enjoyed under the Old Law of demanding usury from strangers.[448] Huguccio seems to adopt the literal meaning. Moved by charity, and not by cupidity, one may exact usury of an enemy whether pagan, Saracen, Jew, heretic or Christian when one has the right to wage war against him.[449] Joannes Teutonicus explains the text as follows: Ask usury of him whom you wish to injure; but you should not desire to injure anyone and therefore should not demand usury of anyone.[450] But he at once gives the opinion of Huguccio and of others who teach that usury may be exacted from an enemy. This opinion is supported by the canons which allow us to injure an enemy in any way even by seizing his property. If we may take his property we may also exact usury.[451]

The text of Saint Ambrose has, in fact, become embarrassing and it is interesting to notice the attempts to interpret it in a sense directly opposed to the literal meaning.[452] There existed a reason for searching another explanation of the canon. The Jews are invoking this text to support their claim that they may legitimately exact usury from Christians. Though forbidden by the councils and by texts to be found in the Decretals,[453] they hold that the law only prohibits them from demanding usury upon loans to those of their race. Besides the texts of the Old Testament they claim that the passage from Saint Ambrose allows their practice of lending money at usury to Christians. From this time all the canonists treat together the question of whether a Christian may exact usury of an enemy and whether the Jews may do likewise towards Christians. They all repel this claim and tell us that the Jews are claiming Saint Ambrose as a witness to their right. This seems to be the reason why many authors henceforth refuse to admit the literal interpretation of our text.[454]

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[440] *De Tobia*, c. 51, ed. Schenkel in the *Corpus Scriptorum Eccl. Lat.*, Vol. XXXII, Pars II (Vienna, 1897), p. 547–548. The text may also be found in the P. L. 14, 816.

[441] C.14.q.4.c.12: Ab illo exige usuram cui nocere merito desideras; cui jure inferuntur arma, huic legitime inferuntur usurae; quem bello vincere non potes, ab hoc usuram exige, quem non sit crimen occidere. Sine ferro dimicat qui usuras flagitat, sine gladio se de hoste ulciscitur qui fuerit usurarius exactor inimici. Ergo ubi jus belli, ibi jus usurae.

[442] Dictum preceding this canon: Porro, a quo usurae exigendae sint, Ambrosius testatur.

[443] *Summa* on C.14.q.4. ed. Thaner, p. 29: Laicis vero licere poterit ab haereticis vel infidelibus vel ab aliis publice ecclesiam impugnantibus usuram exigere, non causa captandi commodi, sed adversarium ad unitatem ecclesiae hujusmodi afflictionibus revocandi.

[444] *Ibid.:* Numquam licere clericis usuras exigere; cum enim movere arma clericis nullo modo liceat, nec usuras accipere eis quoque licebit.

[445] *Summa*, on C.14.q.4. ed. Singer, p. 342.

[446] *Summa*, V.15.n.5, ed. Laspeyres, p. 235: Ut exigatur ab eo cui juste arma inferuntur, ut Sarraceno.

[447] *Summa*, on C.14.q.4.c.12. *ab illo*, fol. 218ᵛ, col. 2.

[448] *Id.:* c. 12. *ibi jus usurae*, fol. 219ʳ, col. 1; On C.14.q.4. dictum before c. l. *quod vero*, fol. 218ʳ, col. 1.

[449] Joannes Teutonicus understands this to be the opinion of Huguccio.

[450] Gloss on C.14.q.4.c.12, *cui:* Sicut nulli nocere debes, sic a nullo debes petere usuras, ut capitulum intelligatur negative.

[451] *Ibid.:* Alii dicunt quod ab hostibus licitum est petere usuras, nam et omnia eorum licite possumus auferre ut XXIII.q.7.c.1 et 2; Et quibuscumque insidiis possumus nocere eis ut XXIII.q.2.c.2.

The two problems are linked together by Saint Raymund of Penafort in his treatment of the canon. May a Christian, he asks, exact usury from pagans, Jews or other enemies of the Christian religion? [455] The text of Saint Ambrose seems to allow it,[456] but several opinions are held concerning the meaning of the passage.[457] Some hold that the author is speaking of Old Testament times when it was permitted to the Jews to demand usury from Gentiles.[458] Others think that the *ab illo* refers to Jews and *usura* means *pensio*, so that we may exact higher rent from Jews.[459] Still others understand the text to mean pagans and enemies of the state as it seems clearly to say, and this is borne out by the other canons treating of the right to wage war. According to these men we are not permitted to ask usury of the Jews because they are our servants.[460] Finally, the more common opinion holds that it is not permitted to exact usury of anyone because we ought not to wish injury to anyone.[461] It is likewise forbidden to the Jews to exact usury from Christians.[462] Notice that at this date the *opinio communior* rejects the literal meaning of the canon.

Hostiensis is puzzled by the several interpretations possible. The canon indicates that we may legitimately exact usury of the enemies of the Roman Empire and of the faith.[463] But the Jews claim the same rights as regards Christians and this claim is to be repelled. It can be said that though it is licit to exact usury of enemies of the faith this does not hold for Jews as regards Christians, the reason for the difference being that since we may wage a just war against these enemies we may both take their lives and seize their property.[464] The better opinion, he concludes, is that which teaches that usury may not be demanded of anyone because we should have no desire to injure.[465]

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[452] It is interesting to note that in the early years of the thirteenth century the reformer Robert de Courçon, who has not the canonists' respect for embarrassing texts, says that Saint Ambrose is not the author of this text but that it is from Ambrosius Autpertus. See the treatise *De usura* of Courçon, ed. Lefèvre, p. 7.

[453] X.V.19.c.12 and 18.

[454] Apart from this point no attempt has here been made to treat the subject of the Jews and usury, a subject which has often been studied, in part at least, and for which the sources outside of those here used are more abundant and informative.

[455] *Summa*, II.7.n.9, p. 216: Item numquid christiani a judaeis, vel paganis, vel ceteris hostibus fidei christianae?

[456] *Ibid.:* Ad aliud expresse videtur sentire Ambrosius . . . quod licite a talibus hostibus possunt usuras exigere christiani.

[457] *Ibid.:* Super hujusmodi auctoritate diversae sunt opiniones et variae.

[458] *Ibid.:* Dicunt enim quidam quod loquitur secundum antiqua tempora quando permissum erat judaeis in lege accipere usuras ab alienigenis et hanc permissionem prosequitur Ambrosius exponendo.

[459] *Ibid.:* Alii intelligunt de judaeo, ut exponunt *ab illo*, scilicet judaeo; *usuram*, id est pensionem magnam, et hoc per aliud decretum C.23.q.6.c.4.

[460] *Ibid.:* Alii intelligunt de paganis et hostibus reipublicae sicut littera plane sonat; talibus enim et aperte et per insidias et omnibus modis possumus tamquam indignis auferre quae male detinent; secus de judaeis quia illi servi nostri sunt et parati nobis servire ut C.23.q.8.c.11; q.7.c.1 et 2; q.2.c.2.

[461] *Ibid.:* Alii dicunt, quorum opinio communior est, quod a nullo homine, christiano, judaeo, pagano, vel alio, licet exigere usuram per ea quae dicta sunt supra . . . et exponunt litteram negative sic: "ab illo exige usuras, O tu, quicumque sis, cui merito nocere desideras." Sed nulli merito debes desiderari nocere, ergo a nullo debes usuras exigere. Et sic exponunt totam litteram.

[462] *Ibid.:* Item numquid judaeus potest exigere usuras a christianis. . . . Respondeo quod peccat judaeus mortaliter; Gloss on C.14.q.4. dictum before c. 1. *quod vero:* Nulli licitum est usuras sumere, nec etiam judaeo.

[463] *Summa, de usuris*, n. 8; *Commentaria* on X.V.19.c.16. *computandos:* ab illo cui merito nocere desiderans, hoc est ab hoste romani imperii sive fidei. This linking up of the enemies

Archidiaconus reports all the opinions indicated, adds some more recent ones put forth by theologians and canonists, and finally accepts that of Hostiensis as the more commonly held.[466] He has many arguments to oppose the pretensions of the Jews.[467] With Bohic we return again to the literal interpretation of the text. Usury can be charged by Christians of enemies of the Church and of the Roman Empire. The inference which the Jews draw from this principle, he condemns as false.[468] Panormitanus also accepts the canon as it stands. The *ab illo* refers to enemies in general, those against whom we may justly wage war.[469] He gives a long refutation of the claims put forth by the Jews.[470]

7. *Vendens sub dubio*

This case has already been dealt with above in connection with the prohibition against buying and selling on credit.[471] On account of the probable doubt which exists concerning the value of an article at a future date when payment will be made, the vendor who sells now may sell it for what he thinks it will be worth at that time, even above the present selling price, provided, however, he is not prepared to sell it now for a lower price for immediate payment. The doubt which exists excuses the gain which results, the receiving of something in excess of the capital.

8. *Pretium post tempora solvens*

Here we have a contract of sale. I sell an article which I turn over to the purchaser who promises to pay for it on a certain date. He fails to keep his part of the contract, payment is delayed. He is bound to compensate me for any loss I have sustained; for example, I have been obliged to borrow money and pay usury.[472] This is not usury but payment of damages.[473] Moreover, during the time of the

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of the faith of the Empire is already to be found with Saint Ambrose where immediately following the text which has been quoted above he says: "frater autem tuus omnis, fidei primum, deinde Romani juris est populus."

[464] *Commentaria, loc. cit.:* Vel dic quod quamvis licite petantur ab hoste fidei, non tamen ideo judaei a christianis ipsis petere possunt licite. Ratio diversitatis haec erit quia hostes fidei et bona ipsorum exponuntur. The Jews are forbidden to exact even moderate interest he says elsewhere: *Summa, de usuris,* n. 10, fol. 376^{r}.

[465] *Commentaria, loc. cit.:* Ideo dicunt alii, et verius, quod usura a nullo est exigenda.

[466] *Rosarium* on C.14.q.4.c.12.n° 1–3, fol. 241^{r}.

[467] *Id.:* n° 4.

[468] *Commentaria* on X.V.19.c.8, p. 174: Nam potes petere usuram ab hoste romani imperii, sive fidei. . . . Ideo judaei, sicut dicunt, usuras a christianis licite recipiunt, secundum Jo(annem). Quod tamen falsum est.

[469] *Commentaria* on X.V.15.c.12, Vol. VII, fol. 241^{v}: Contra hostem possumus licite exercere usuram cum licite possumus adversus eos gladio militare et bona eorum occupare, fortius licet exercere usuram contra eos.

[470] *Ibid.* He says that their claim to rightfully exact usury is based on an argument *a contrario sensu* from a text of the Old Testament. Such an argument is not admissible when the contrary is clearly expressed as it is in this case in many other texts of the Law. Their second argument, the text of Saint Ambrose, is not valid because Christians are not enemies of the Jews but allow the latter to live among them. Moreover, the Jews do not enjoy the right to declare war and so have no just enemies. Consequently, Jews sin in exacting usury.

[471] Page 117 ff.

[472] Raymund, *Summa,* II.7.n.2, p. 206; Innocent IV, *Commentaria* on X.V.19.c.1. *plures;* Panormitanus on the same canon.

[473] Gloss of Laurentius on X.V.19.c.8. *de feudo:* Alias etiam posset attentari quod usurae possunt peti etiam secundum canones, ut cum vendo tibi praedium et trado et percipis fructus, nec solvis mihi pretium ad terminum . . . quia hujusmodi usurae non sunt quasi

delay the purchaser is receiving the revenue from the thing bought and I have received nothing. To demand some compensation is not prohibited by the law which forbids gain or increment on the capital. Here I demand damages for loss suffered and do not seek to make a profit.[474]

Note that this case differs from the following in that no penal clause is attached to the contract. A delay in payment occurs and the injured party appeals to the other or to the court for damages on account of the breach of contract. In the next case a penalty for delayed payment is mentioned in the contract.

9. *Poena nec in fraudem*

THE widespread use of penal clauses, the attaching of a penalty to the non-execution of contracts during the Middle Ages is a well-known fact. It was natural that such clauses should be attached to the contract of loan. The Canon Law admitted generally the liceity of these penal clauses in contracts, but on account of the abuse to which they could give rise in contracts of loan the canonists were obliged to give it close attention. As a result of their efforts to enforce the prohibition against usury, penal clauses took on a new character which they possess in modern law. They cease to be purely penal and are intended to indemnify the injured party for loss incurred through the broken contract.[475]

The borrower promises the creditor to return the loan at a certain date or he will pay a penalty for the delay. Such a penalty is in principle licit though in such a case the creditor receives something in excess of the principal. All the canonists admit this.[476] However, such a condition lends itself to fraud. Forbidden to take usury on a loan, the lender attaches a penalty to the contract, not to oblige the debtor to avoid delay in payment, but in the hope, and more often with the sure knowledge, that the money will not be returned on the date fixed so that in this way he receives, under form of penalty, the equivalent of usury. Bernard of Pavia [477] and others reveal the practices of some money lenders. If the debt is not paid at a certain date, states the penal clause, the debtor will be obliged to pay so much for each mark and such contracts are extended from one date to another. Or if the debt is not paid upon the date agreed the penalty will be a certain rate per month.

What is the value of such penal clauses in a contract of loan? They are to be held as valid, says Bernard, unless they have been attached with a fraudulent intention. If the penalty is not intended to be an incentive to the debtor to repay the loan on time, but a disguise for receiving usury, then they are illegal and the creditor will be condemned as a usurer.[478] Huguccio,[479] Laurentius [480] and Raymund of Pena-

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usurae sed quasi interesse petuntur. Cf. also gloss of Vincentius on Comp. Tertia. V.10.c.1. *sperantes*, Ms. Vat. *Lat.* 1378, fol. 99^{v}, col. 2.

[474] Hostiensis, *Summa, de usuris*, n. 8: cum petitur causa damni vitandi, non lucri captandi; *Commentaria* on X.V.19.c.16. *computandos:* In eo enim quod sorti accedit non prohibetur petitio interesse sed tantum turpis lucri vel alterius illiciti incrementi.

[475] This point has been well brought out by A. Fliniaux, "L'évolution du concept de clause pénale chez les canonistes du moyen âge" in *Mélanges Paul Fournier* (Paris, 1929), p. 233–247.

[476] Laurentius, gloss on X.V.19.c.8. *de feudo:* Joannes Teutonicus on C.14.q.4.c.7. *ad quaestum;* Hostiensis, *Commentaria* on X.V.19.c.16. *computandos; Summa, de usuris*. n. 8.

[477] *Summa*, V.15.n.9, ed. Laspeyres, p. 238.

[478] *Ibid.:* Si vero exigatur poena conventionalis in fraudem usurarum apposita, incidit in crimen usurarum. . . . Si vero apposita poena conventionalis ad hoc, ut metu poenae statuto die solvatur, ea commissa, non puto usurarium si exigatur, maxime si intererat creditoris eam solvi.

[479] *Summa* on C.14.q.3.c.3. *vulvam*, fol. 218^{r}, col. 1: Quid de poena quae imponitur ut in certo tempore solvatur pecunia, estne usura? Et quidem talis poena potest esse licita et potest esse illicita puta si fiat in fraudem usurarum. Non tamen inde potest conveniri vel condemnari ab ecclesia. Si cum veniatur ad presumptionem, dico quod ille cui est promissa talis poena est solitus exercere foenebrem pecuniam praesumitur esse usura. Si non est solitus non videtur esse turpe lucrum nec praesumitur esse usura sed potius praesumitur quod hoc fecerit ut coarctaret debitorem ad solvendum quia interesset sua tunc pecuniam sibi solvi.

[480] Gloss on X.V.19.c.8. *de feudo:* Item ubi

fort[481] have the same teaching. In court there can only be certain presumptions since all depends on the intention which belongs to the internal forum. Such a penalty, states Bernard, is to be presumed fraudulent when under another name it amounts to the same thing as usury.[482] Huguccio gives one presumption only which may be used. If the creditor is accustomed to exact usury the penalty is presumed to have been attached *in fraudem usurarum*.[483] Raymund advances two presumptions which are really those of Bernard and Huguccio. There is presumed to be fraud if the creditor is an habitual usurer or if the penalty is proportioned to the space of the delay, so much a month or a year.[484]

Neither of these presumptions could give complete satisfaction because often the first one, that the man was a usurer, was precisely what the court was trying to establish and the grounds for the second could be destroyed by stipulating a fixed sum as a penalty. The canonists look elsewhere for a way out of the difficulty. Dealing with a contract of partnership, a text of Roman Law distinguished between *usura* and *interesse*.[485] The civilian lawyers applied it to other contracts. When the debtor delays payment, they say, he is not obliged to pay *usura*, that is, a sum proportioned to the time and to the loan, but *interesse*, damages or indemnification for loss sustained through the delayed payment.[486]

Familiar with the *leges* and with the teaching of the civilians, the canonists distinguish between *usura* and *interesse*. The earlier commentators, however, do not, and the first ones to do so clearly are Laurentius Hispanus in a gloss which was later inserted by Bernard of Parma in the *glossa ordinaria* to the Decretals, and Joannes Teutonicus in his *apparatus* to the Decretum.[487] Laurentius says that when a penalty is attached to a loan it may be demanded in court as *interesse* and not as *usura*. Also for delayed payment in a sale *usura* may be asked, not as *usura* but as *interesse*. Damages and *interesse* are allowed by the Canon Law because it is not

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aliquid apponitur nomine poenae dum tamen non in fraudem usurarum.

[481] *Summa*, II.7.n.4, p. 209: Si vero poena sit conventionalis, id est de communi consensu partium in ipso contractu apposita, ut saltem metu poenae, debitum certa die solvatur, usura non committitur, dum tamen sit intentio recta. In his *Summa Pastoralis* those who make the visit of the parish are to inquire: Utrum exerceat usuram nomine poenae palliatum, scilicet cum in poenis non intendit ut solvatur citius sed ut solvatur amplius. This *Summa* has been edited by Ravaisson in appendix to the *Catalogue général des manuscrits des bibliothèques publiques des départements*, Vol. I (Paris, 1849), p. 592–649. Our text is found on p. 622.

[482] *Summa*, *loc. cit.:* Praesumitur autem in fraudem usurarum apponi cum, nomine mutato, instar sequitur usurarum.

[483] See p. 140, note 479.

[484] *Summa*, II.7.n.4: Si autem ille qui talem poenam apposuit consuevit esse usurarius praesumitur quod in fraudem usurarum adjecerit poenam. . . . Est etiam praesumptio quod sit usura si per singulos menses vel annos dicatur committi.

[485] Dig. XVII.2.f.60.

[486] Azzo, *Commentaria* on Cod. IV.32.2, p. 480: Sed usura ista praestatur tamquam interesse. Ex eo enim quod fructus percepit, quasi mora sit, teneatur ad usuras tamquam ad interesse, non tamquam usura, vel praestatur tamquam utilitas, et ideo videretur licita. See also his *Summa*, *de usuris*, fol. 109^v; Accursius, gloss on Cod. IV.32.2.

[487] Huguccio some twenty years earlier seems already to make the distinction but not so clearly. He does not employ the substantive *interesse*, but the verb form *interesset* which he opposes to the exacting of *usura*. (See above, p. 140, note 479.) Without referring to it he appears to have in mind the text of Roman Law which formed the basis of this distinction and where the form used is *intersit*. He may not have had the civilians' teaching on the opposition between *usura* and *interesse*. The development of this distinction with them has not been gone into. The earliest text given by Fliniaux (p. 240, n. 24 of *art. cit.* above, p. 140, note 475) is of Azzo. The teaching of Bernard of Pavia on this point is about the same as that of Huguccio. He uses the word *intererat* (see above, p. 140, note 478). Shortly before Laurentius, between 1210 and 1215, Vincentius says there is an exception to the prohibition against usury, ubi usurae petuntur quasi interesse, but the case he refers to is that of the *fidejussor*. Gloss to Comp. Tertia. V.10.c.1. *sperantes*, Ms. Vat. *Lat.* 1378, fol. 99^v, col. 2. When the mass of literature contained in the numerous glosses has been disentangled, dated and attributed to the correct authors it may perhaps be possible to trace the introduction of this distinction into the Canon Law.

receiving something over the capital which alone is forbidden.[488] The exposition of Joannes is clearer. The canons prohibit usury which is gain but do not prohibit usury which protects the creditor against loss. This applies when payment is delayed. Then *usura* may be demanded of the debtor as *interesse*, reparation for loss.[489] Both of these canonists base their distinction upon the text of the Digest which opposed *usura* to *interesse*. The same doctrine is to be found with all succeeding canonists.[490]

Raymund of Penafort asks whether the *poena* may exceed the *interesse*, that is, whether it may exceed the actual loss sustained through delayed payment.[491] Though he promises to provide the answer elsewhere in his work, he neglects to do so. Innocent IV allows the whole penalty stipulated to be exacted even though it more than repairs loss incurred.[492] Both William of Rennes [493] and Bernard of Parma [494] distinguish whether the penalty inserted in the contract was *loco interesse*, to cover damages which would result from a delay in payment, or whether it was attached *loco contumaciae*, to oblige the debtor to fulfil the terms of the contract. In the first case the *poena* can only equal the *interesse*, cover the actual loss sustained. In the second case the whole *poena* may be exacted provided it was not attached to the loan *in fraudem usurarum*.

This last case becomes thus one for the internal forum since it depends on the intention. In order to handle it in the external forum Hostiensis makes use of a principle of Roman Law which established a presumption of fraud when the penalty was attached to a quantity of money, and in such cases the Civil Law allowed only the legal rate of *usura*.[495] Under the same conditions Hostiensis allows the penalty to equal but not exceed the *interesse*. He has substituted *interesse* for the *legitimus modus usurarum* since all usury is prohibited by the Canon Law.[496] If, then, the penalty attached to the loan exceeds the actual loss incurred, it is presumed to have been done to escape condemnation for exacting usury. Such a presumption, he holds, must be used because the penal clause, in itself legitimate, provides money lenders with a method of obtaining the equivalent of usury.[497] He holds also that any penalty attached to a contract may be reduced by the judge when it exceeds twice the value of the object of the contract.[498] Panormitanus accepts the presumption as taught by Hostiensis but does not recognize in the judge this power to reduce the penalty.[499]

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[488] Gloss on X.V.19.c.8. *de feudo:* Quia hujusmodi usurae non sunt quasi usurae sed quasi interesse petuntur. . . . Damna vero et interesse secundum canones peti possunt . . . et maxime in contractibus bonae fidei ubi usurae veniunt ex mora . . . quia nec dicitur usura sed potius interesse quia non dicitur recipere ultra sortem. . . . Item ubi aliquid apponitur nomine poenae, dum tamen non in fraudem usurarum. . . . Tamen omnibus praedictis casibus non dicuntur usurae sed potius interesse videtur.

[489] Gloss on C.14.q.4.c.7. *ad quaestum:* Videtur hic quod prohibeamur sumere usuram, causa lucri captandi, non autem ad vitandum damni. . . . Si quis ergo est in mora solvendi, ab eo possunt repeti usuras, non tamquam usurae sed tamquam interesse. . . . Licite enim potest quis agere ad hoc ut reddatur indemnis.

[490] Raymund, *Summa*, II.7.n.2: Secundo, ubi usurae petuntur quasi interesse, quia non sunt usurae . . . sed potius interesse, id est, non lucrum est sed vitatio damni; n. 6: Illae tamen leges quae permittunt usuras exigi ratione interesse vel ratione morae, bonae sunt et approbandae si sane intelligantur; Hostiensis, *Summa, de usuris*, n. 8; *Commentaria* on X.V.19.c.16. *computandos;* Innocent IV, *Commentaria* on X.V.39.c.48; Panormitanus, *Commentaria* on X.V.19.c.2.

[491] *Summa*, II.7.n.4: Utrum autem liceat tales exigere quantum ad interesse tantum aut etiam ultra. According to Fliniaux (*art. cit.*, p. 242), Raymund is the first to have established the connection between the *poena* and the *interesse*. The text above, however, of Laurentius states that the penalty is to be considered as *interesse*.

[492] *Commentaria* on X.V.37.c.9. *poena:* Credimus quod etiam si poena interesse excedat quod licite tota poena petitur.

[493] Additions to the *Summa* of Raymund, II.7.n.4 and III.34.

[494] Gloss on X.I.43.c.4. *compromisso:* Vel melius dicas quod si poena apponitur loco interesse, secundum hoc potest petere poenam quanti sua interest. . . . Sed si poena apponitur loco contumaciae, tunc potest peti poena et res. . . . Si autem apponitur in fraudem usurarum, peti non potest.

[495] Accursius, gloss on Dig. XIX.l.f.13.n.6. *excedit*, and on Cod. IV.32.15. Cf. Fliniaux, *art. cit.*, p. 244–245.

[496] *Summa, de usuris*, n. 9, fol. 375^v: Ut tamen scias poenam in quantitate appositam praesumptionem usurae inducere sicut ibi dixi, secus si speciei vel facto apponatur, subaudi ab illo qui non est usurarius.

The canonists point out that there is a difference between *usura* and *poena*. The former is paid according to the length of time, so much a month or a year. The penalty, on the other hand, does not depend on the length of time but upon what the parties agreed to in order to assure fulfilment of the contract. It is paid because of broken faith, because the money has not been repaid. Usury is paid rather that the capital may not have to be paid, that its payment may be deferred.[500]

10. *Lex commissoria*

This case takes its designation from the incipit of a law of Justinian upon which it is based.[501] By the terms of the contract the seller is allowed to regain possession of the article sold by refunding the same price within a given length of time. During this time, however, the revenue derived from the article belongs to the purchaser so that he can be said to have received something in excess of the capital, which seems to be usury. Such a contract is lawful according to Laurentius [502] and Hostiensis,[503] provided there is no fraud, that is, provided it is a real sale and not a loan upon security where under cover of a sale the creditor seeks to retain the revenues from the pledge placed in his hands. We have already seen how this contract might be used *in fraudem usurarum*.[504]

11. *Gratis dans*

This case offers no difficulty. Innocent III in a letter of 1206 declares that what the debtor offers freely in excess of the capital is not to be considered usury and the creditor is not bound to restitution.[505] There must be no exaction made by the creditor, no express or tacit agreement that such a gift will be made. Moreover, his intention must be honest, his principal motive in granting the loan must not be the gift which he hopes to receive or he may be obliged to make restitution. This point has already been discussed.[506]

12. *Socii pompa*

Two texts, one of Ulpianus, the other of Gaius, in the Digest constitute the basis for this case where it is permitted to receive something *ultra sortem*. The first forbids renting what is consumed in use unless it is merely rented *ad pompam*, for purposes of ostentation, of ornamentation.[507] The second applies this same rule to money which may be let out for such purposes.[508]

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[497] *Id.:* n. 10, fol. 377^{r}: Quid enim si creditores hoc audientes currerent omnes communiter ad poenam in mutuis stipulandam? Certe majores essent usurae quam prius cum poena conventionalis in infinitum extendatur. . . . Est ergo praesumendum contra stipulantem poenam in mutuo nisi petatur poena quae loco interesse succedit.

[498] *Summa, de sententia,* fol. 179^{r}.

[499] *Commentaria* on X.I.43.c.4.

[500] Hostiensis, *Summa, de usuris,* n. 1, fol 372^{r}; Bohic, *Commentaria* on X.V.19.c.6, p. 172.

[501] Cod. IV.54.4.

[502] Gloss on X.V.19.c.8. *de feudo.*

[503] *Summa, de usuris,* n. 8, fol. 374^{r}: Si vendo tibi rem meam tali pacto quod si solvo tibi usque ad duos annos res revertatur ad me, hoc enim facis fructus tuos ut Cod. *de pactis inter emptorem et venditorem, l. commissoria* (IV.54.4). Quod intelligas quando pretium justum est et nihil sit in fraudem usurarum, alias contra; *Commentaria* on X.V.19.c.16. *computandos.*

[504] Page 115 ff.

[505] Potthast, 2656, P. L. 215, 766. The letter is to be found in the collection of Bernardus Compostellanus Antiquus, V.12.c.4, edit. Singer (Vienna, 1914), p. 100.

[506] Bernard of Pavia, *Summa,* V.15.n.8, ed. Laspeyres, p. 237; Innocent IV, *Commentaria* on X.V.19.c.1. *plures;* Raymund, *Summa,* II.7.n.1, p. 205; Hostiensis, *Summa, de usuris,* n. 8, *Commentaria* on X.V.19.c.16.

Huguccio [509] and Laurentius [510] make this one of the exceptions to the rule that no excess over the capital is allowed but say it is not really a loan but a contract of rent or hire. Hostiensis and others include it in their list of exceptions.[511] Others, such as Panormitanus, do not mention it here but treat it elsewhere because it is not a *mutuum*. They say that in this case the ownership may be separated from the use. The use is to make a show and the money is not consumed in use.[512]

13. *Labor*

This case is mentioned by Hostiensis immediately after his verse and is also treated by other canonists. One who on the occasion of a loan has been obliged to expend certain labour may demand compensation for it. This will be especially true when security has been given for the loan. As we have seen above, the revenue diminishes the debt but the holder is allowed to deduct from this revenue the expenses which he has had to incur. The same holds for any loan. The canonists have no difficulty in allowing an excess over the capital in this case. The creditor is paid for his work and there is no question of usury.[513]

CONCLUSION — EXTRINSIC TITLES

Some of the cases which have just been discussed present no difficulty from the point of view of the permission to receive something *ultra sortem*. They offer examples, not of usury, but of something resembling usury and only the desire of some of the canonists to give an exhaustive list of such cases accounts for their being discussed at all in their treatment of usury. Thus the *gratis dans*, a gift freely made by the borrower, has nothing usurious about it. The *lex commissoria* is not a loan either with or without security but a sale on trial, the buyer retaining the fruits during the time of trial. The *socii pompa* is not a loan but a contract of rent or hire in which the owner is always entitled to something for the use which he cedes to another. The *venditio fructus* is a sale. The *cui velle jure nocere* is a special case based on the doctrine of the just war. One who may justly put his enemy to death and seize his property is permitted to exact usury from him. The *feuda*, of which case some would make a special privilege for the Church is, if we accept the better teaching, an exception based upon the very nature of the fief where the one exacting usury has at the same time ownership and so does not demand profit from something which is no longer his. The *stipendia cleri* is either the same case or, as seems more probable, a case where a cleric may regain ecclesiastical property unjustly held by another. The greatest canonists teach that it is no privilege in favour of clerics but is a method permitted to all persons to recover property from an unjust possessor.

Several explanations are advanced for the *pro dote*. The husband really owns it and the substitute given to him must take its place; consequently, its revenues go to support the marriage. Or the exception here is on account of the public good. This really seems to have been the reason for the introduction of the exception if one bears in mind the importance of the dowry in mediaeval society and its purpose, requiring that it be kept secure and intact as long as the marriage lasted at which time the widow would enjoy the protection and independence necessary. However, the more common opinion of the canonists, seeking juridical rather than moral grounds, placed it in the following group of cases. A number of the exceptions are considered to be justified because of damage caused to the creditor. Something in excess of the principal is allowed as indemnification for loss. Here it is said the title of *damnum emergens* excuses the contracts from being usurious. Besides the dowry four other cases are to be included under this heading, the *fidejussor*, the *pretium post tempora solvens*, the *poena nec in fraudem* and the *labor*. There remains one other case, the *vendens sub dubio* where something is permitted in excess of the capital because of the title *lucrum cessans*.

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[507] Dig. XIII.6.f.3.n.6: Non potest commodari id quod usu consumitur nisi forte ad pompam vel ostentationem quis accipiat.

[508] *Id.* f 4: Saepe etiam ad hoc commodantur pecuniae ut dicis gratia numerationis loco intercedat.

[509] *Summa* on C.14.q.3.c.4, fol. 218^{r}, col. 1: Si quaeris an pecunia possit commodari vel locari, et quidem potest, ad pompam et ostentationem.

[510] Gloss on X.V.19.c.8. *de feudo:* Item ubi pecuniam datur ad pompam possum inde recipere mercedem quia non est mutuum sed potius commodatum sive locatio.

[511] *Summa, de usuris*, n. 8; *Commentaria* on X.V.19.c.16. *computandos;* Bohic, *Commentaria* on X.V.19.c.8.

[512] *Commentaria* on X.V.19, rubric: Si ego locarem tibi pecuniam, non ut expendas, sed ut ad pompam retineas in bancho, licite tunc possum aliquod lucrum capere, quia tunc usus rei est separatus a dominio.

[513] Hostiensis, *Summa, de usuris*, n. 8; *Commentaria* on X.V.19.c.16, where he hesitates to admit this as a distinct case; Raymund, *Summa*, II.7.n.5, p. 211.

The first few cases lose their importance in the study of usury and the authors are more concerned with the titles themselves, *damnum emergens*, *lucrum cessans* and *periculum sortis*. It is true, however, that the canonists of the period studied do not discuss these titles in themselves but rather the specific cases which have been noted above. The theologians are more concerned with extracting the two or three general principles behind them all, and discussing their validity and general application, than with the treatment of numerous concrete cases. Without having gone into the development of the theological teaching on these extrinsic titles it seems safe to say that the theologians rather than the canonists are mainly responsible for reducing all the exceptions to applications of a couple of principles. This is true for so many other questions treated by both theologians and canonists that it seems likely to hold here also. In any case the canonists studied have no systematic discussion of these titles and their teaching can only be gleaned from what they say about each of the cases treated above. We will point out briefly here in what cases their doctrine concerning these titles may be found.

The title of *damnum emergens* allows something to be received in excess of the principal in all cases where the lender has suffered a loss on account of the loan. He has the right to be compensated for damages resulting from the loan and to be restored to the situation which he would occupy if the loan had not been made. The usual example given is where the lender has, on account of the loan, been himself obliged to borrow at usury, but the same applies to loss sustained in any other way because of the loan which he made. As has already been seen, the canonists from the very earliest all admit that loss incurred is sufficient title for demanding usury though they add that it is not *usura* but *interesse*, compensation for damages accruing. The numerous texts quoted above, particularly in discussing the *poena* but also in the other cases included under this title, may dispense from further insistence upon the title at this point.

The title of *lucrum cessans* is closely allied to that of *damnum emergens* but did not meet with the same universal recognition. The close connection results first of all from their very nature. One who fails to make profit because of a loan which he has made can easily be seen to have suffered a loss just as real as one who has incurred certain expenses on account of the loan. It remains only to prove that such profit would actually have been made. The alliance is due to another fact, the conceptions of the Roman lawyers. According to Roman law the *interesse*, *id quod interest*, the difference between the present situation of the lender and what it would have been if the loan had not been made, included both damages for actual loss and compensation for the gain which on account of the loan he has failed to make, in other words both *damnum emergens* and *lucrum cessans*.[514]

With texts of Roman Law before them the civilian lawyers admit more readily than the canonists the title of *lucrum cessans* as justifying the exaction of something in excess of the principal in a loan. They see very little difference between this and the *damnum emergens* since in both cases a loss has been incurred on account of the loan.[515] The failure to make a gain must, however, be shown. There is presumed to have been a failure to make gain when the lender is a merchant or one who is accustomed to make profit from his capital in any honest way. He may not demand compensation for loss of gain which he could have made from lending at usury. Thus his business must not be money lending itself.[516]

A decretal of Alexander III is generally interpreted as containing the first legislative recognition of the title *lucrum cessans*.[517] It is not in a loan but in a case of deferred payment in a contract of sale, which contract may, however, be broken up into a contract of loan and so we find it treated with the subject of usury. In the case in question the seller is allowed to sell higher than the current price, at a price which he reasonably supposes the article will be worth when the payment is made. He thus receives compensation for the loss he sustains in parting with it now instead of holding it until the time of payment. It is compensation for *lucrum cessans*, gain lost. While admitting that this contract is not to be adjudged usurious the pope counsels the faithful against using such. Here is already one reason for hesitation in admitting *lucrum cessans* as sufficient title for receiving an excess over the principal. Some years later Gregory IX says that persons entering into such contracts are not to be esteemed guilty of usury but, besides demanding likewise the reasonable doubt concerning the price at the time of payment, he attaches a further condition to such contracts in order that they may not be condemned as usurious. The seller must not be prepared to sell now at the current price for immediate payment.[518] Here we have a second reason opposing the admission of the title *lucrum cessans*.

The hesitation evidenced by the legislator in admitting this new title is undoubtedly responsible for the divided opinion among the canonists concerning its validity. Some reject it while others such as Hostiensis and Panormitanus[519] accept it. A specific case where it is question of compensation for gain lost has already been discussed and the reader will find there the difficulties which the canonists experienced in allowing *lucrum cessans* as justification for exacting something more than the principal.[520]

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[514] Cod. Just. VII.47.1. un.: Et hoc non solum in damno sed etiam in lucro; Dig. XIII.4.f.2.n.8: An et lucri ratio habeatur non solius damni? Puto et lucri habendam rationem. This passage is from Ulpian.

[515] See the various commentaries on the two texts of the preceding note.

[516] Cinus on Cod. *auth. ad haec:* Nunquid ut interesse peti possunt usurae? Dicendum quod sic sive interesse sit in damno sive in lucro dum tamen honesto quia tale lucrum ex mutuo non speratur, immo quasi tantum sibi reputatur abesse de suo quia tantum lucratus fuisset postea de pecunia forte quia erat mercator, secus si esset alia persona qui reponeret pecuniam in archa. Et ideo non est usura . . . licet sic appelles eam cujus nominis disputatio pertinacibus relinquuntur.

[517] X.V.19.c.6. See above, p. 117 ff.

[518] X.V.19.c.19.

[519] The position of Panormitanus is quite clear on the question and gives us a good summary of the teaching at the end of the Middle Ages. It may be useful to quote in extenso a text so far omitted. *Commentaria* on X.V.19.c.8, Vol. VII, fol. 238v: Sed potest dubitari in quo consistat istud interesse. Petrus de Ancharano (†1416) consuluit quod non solum in damno habito sed etiam in lucro cessante si iste venditor erat solitus mercari, unde si habuisset pretium in termino constituto forte lucratus fuisset in mercimonio. Item passus est damnum in alio quia ille emptor percepit fructus quos iste percepisset si habuisset rem. . . . Et istae rationes concludunt idem esse in mutuante ut si debitor non solvit in termino non posset haberi post terminum respectus ad lucrum cessans, dummodo sit talis persona quod verisimiliter juste fuisset lucratus, et habebit aestimare hoc judex. Pro hoc adduco textum in Dig. (XIII.4.f.2.n.8) ubi dicit quod in hoc interesse habebitur ratio lucri cessantis. . . . Et hoc tene perpetuo menti ut sic etiam de jure canonico possit peti aliquid ultra sortem ratione interesse, non solum damni contingentis, sed etiam lucri cessantis.

What about the title of *periculum sortis?* May compensation be received because of the risk that the principal itself may be lost? The canonists do not discuss this as a distinct case but may be said to have dealt with it in commenting upon the decretal *Naviganti* of Gregory IX. In this text, as will be recalled, the pope condemns as a usurer a man who lends money to a merchant and exacts a profit because he assumes the risk of its loss.[521] It seems here that there is even a greater risk than the usual *periculum sortis* in a loan which is rejected as a sufficient title to justify demanding an excess of the capital. In an ordinary loan the risk of losing the principal is due to the fact that the debtor may abscond or become insolvent. But he always remains obliged to repay the loan. When he again has means he can be forced to pay his debt. In the decretal of which it is question the case seems somewhat different. Here a man lends money to a merchant who is going to a distant market, on condition that he will receive a certain profit provided the capital itself is not lost. That is the provision contained in the fact that the lender assumes the risk. If the cargo is lost at sea or on land because of the elements, pirates, robbers or in any other way the principal has been lost to the lender because he has assumed the risk of the venture. Even though later the same merchant may become rich he is not bound to repay the loan.

If this interpretation is correct it will readily be seen that a much greater risk is assumed in the case envisaged by Gregory IX, and even then the risk does not justify profits being reaped upon a loan. In any case the canonists are faithful to the text of the decretal in refusing to make any exception to the laws on usury because of the risk which the lender assumes. *Periculum sortis* is not sufficient title to any compensation in a loan.

In the next and final installment of this study we will discuss the penalties which fall upon usurers; how the crime of usury is proven and punished; jurisdiction over cases of usury.

(*To be continued*)

[520] See page 122 ff.

[521] See page 103 ff.

An Old French Life of Saint Barbara

ALEXANDER JOSEPH DENOMY, C.S.B.

I. THE LEGEND OF SAINT BARBARA

Historically, there is very little, hardly anything in fact, that is known of the life and martyrdom of Saint Barbara. It is quite otherwise with the legend that has grown up about her. In the Greek Calendar her feast is celebrated on the 4th of December.[1] The Syrian Menologies from the ninth century on indicate her feast together with that of Saint Juliana on the same date.[2] In the historical Martyrologies, however, which were composed from the ninth century on in the West, with the exception of that of Rhabanus Maurus, the date of her feast is given as the 16th of December.[3] The Martyrology of Rhabanus Maurus (d. 856) which depends to a great extent on that of Bede, but which in addition made use of the Legends of the Saints, evidently derives his notice from the *Acta* of Saint Barbara. He gives her feast as the 4th of December.[4] The date of her martyrdom, the place in which she was born and died are not related in authentic documents but in legendary *Acta*, and there these facts differ from one another.[5] She was known quite early in Rome, before the end of the seventh century. There her picture is found in the decorations of the Church of Sancta Maria Antiqua.[6] By the ninth century the cult of Saint Barbara was very popular in the East and she was venerated in some localities in the West.[7] In the centuries following many manuscripts appear in Latin, Greek and Syriac recounting her life and martyrdom, miracles performed through her intercession, exempla showing forth her power and her glory, the finding and the translations of her relics.[8]

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[1] Cf. *Synaxarium Ecclesiae Constantinopolitanae, Propylaeum ad Acta Sanctorum Novembris*. Ed. H. Delehaye (Brussels, 1902), col. 278.

[2] Cf. P. O. X: 36, 53, 94, 103, 116, 128. Cf. also the Coptic version of the *Arabic Jacobite Synaxarium* in P. O. III: 403–404.

[3] The first of the historical Martyrologies which contains a notice of the feast of Saint Barbara is that of Ado composed between 850–860. Cf. H. Quentin, *Les martyrologes historiques du Moyen-Age* (Paris, 1908), p. 493; P. L. CXXIII: 415. Subsequent to Ado and from him, it passed into the Martyrology of Usuard (d. 866). Cf. *Acta Sanctorum*, Junii tomus VI (Paris and Rome, 1866), p. 677. The *Parvum Martyrologium Romanum* may be disregarded since apparently it is a compilation of Ado himself. Cf. H. Quentin, *op. cit.*, pp. 649–672, especially p. 672. The feast of Saint Barbara is not found in Bede but only in later redactions dependent on Ado.

[4] Cf. P. L. CX: 1183.

[5] Ado and Usuard state that Saint Barbara was martyred during the reign of Maximianus (268–305). The *Laudatio sanctae Barbarae*, attributed to Saint John Damascene (P. G. XCVI: 790) and the *Martyrium beatae Barbarae* by Simon Metaphrastes (P. G. CXVI: 302), and Rhabanus Maurus (*loc. cit.*) also say that she was beheaded in that reign. There is a shorter version of the *Laudatio* said to have been made by Gelasianus, and a Latin translation of the *Martyrium* edited by Surius in his *de probatis sanctorum vitis quas tam ex manuscriptis codicibus quam exeditis authoribus* (Cologne, 1608), pp. 123–128. In the Latin *Acta* edited by Mombritius in his *Sanctuarium seu vitae sanctorum* (Paris, 1910), I, pp. 138–140, the same is stated. The author of the *Legenda Aurea* follows that opinion. Cf. *Legenda Aurea* edited by Th. Graesse (Leipzig, 1850), pp. 898–902. Baronius according to Tillemont cites manuscripts which claim that she was martyred during the reign of Maximinus. Cf. *Mémoires pour servir à l'histoire ecclésiastique*, III (Paris, 1701), pp. 690–691.

Ado and Usuard state that Saint Barbara was martyred *in Tuscia*, Simon Metaphrastes in Heliopolis, and other Greek versions in the province of Aliopolis in a town called Dalason some twelve miles from Antioch. Cf. W. Wegh, *Die Syrische-Barbara-Legende* (Schweinfurt, 1911–1912), p. 5. The *Acta*, edited by Mombritius, locates her martyrdom in an eastern region "quae vocabatur Solis civitas," i.e., Heliopolis. The *Laudatio* attributed to John Damascene merely states that the Saint's father was a Greek. Baronius, however, believes that she died in Nicomedia (Cf. Tillemont, *op. cit.*), as does the author of the *Legenda Aurea.*

[6] Cf. W. deGrünisen, *Sainte Marie Antique* (Rome, 1911), pp. 100, 220, and Plate XVIII.

[7] The feast of Saint Barbara does not appear

The legendary accounts agree in the events they narrate with but slight variations. The main features of her *Passio* are the following. Barbara was the only daughter of a powerful nobleman called Dioscorus, a pagan, much devoted to the worship of his false gods. She was extremely beautiful. To prevent the eyes of men from beholding her beauty, and to allow her to grow up in ignorance of evil, her father built a tower, and there she lived shut off from intercourse with the world. When Barbara grew older, many nobles of the country who had heard of her beauty and her virtues though they had never seen her, sought her hand in marriage from her father. When Barbara was acquainted with these proposals she indignantly rejected them.[9]

Dioscorus had to set out on a long journey. Before he left, he gave directions for the construction of a magnificent bath for his daughter. When her father had gone, one day Barbara went to view the building. She noticed that only two windows were being built in the Southern side of the bath. She then gave orders that a third window be broken in the wall to symbolise the Holy Trinity. After some opposition on the part of the workmen, they obeyed when she told them that she would take the blame and the punishment should her father take umbrage at their disobedience to his orders. As she walked through the bath, in one section, her footprints remained visible on the floor; she traced the sign of the Cross on the marble and it remained visible until this day as though engraved there with a sharp instrument. As she returned to the tower, to show her disdain, she overturned the idols that were so dear and so sacred to her father.

Dioscorus returned. He saw the third window in the bath. In answer to his question, Barbara told him that she had commanded it to be built so that more light might be admitted into the bath, that is, the light of the Holy Ghost since the three windows signified the Holy Trinity.[10] When her father learned that she was a Christian, he drew his sword to kill her. The floor on which she stood broke away and carried her miraculously to the peak of a mountain. There two shepherds were keeping their flocks. Dioscorus pursued his daughter and when he came to the shepherds he asked them if they had seen her. One refused to betray the maiden, but the other pointed out her hiding-place. He was turned to stone in punishment and his sheep became locusts.

The cruel father seized his daughter and dragged her from the mountain by the

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in the original recension of the Martyrology of Saint Jerome. It was added, however, at a later period. There the place of her martyrdom is given as Rome. Cf. *Commentarius Perpetuus in Martyrologium Hieronymianum, Acta Sanctorum Novembris,* tomus II, Pars Posterior (Brussels, 1931), pp. 634–635. This notice may be due to the presence of some relics at Rome and not improbably, at Sancta Maria Antiqua.

[8] Cf. *Bibliotheca Hagiographica Latina* (Brussels, 1898–1899), I, 913–971; and the supplement volume in *Subsidia Hagiographica,* 12 (Brussels, 1911), p. 40 ff. *Bibliotheca Hagiographica Graeca* (Brussels, 2ed. 1909), II, 213–216. *Bibliotheca Hagiographica Orientalis* (Brussels, 1910), 132–134.

[9] The *Laudatio,* attributed to Saint John Damascene, indicates that Barbara was already a Christian and rejected these proposals of marriage because she wished to remain a virgin and the spouse of Christ. In the *Legenda Aurea* version, we are told that the young girl had reasoned her way to faith in the One, True, Uncreated God, and to the conviction of the falsity of her father's created idols. She sent word to Origen in Alexandria that she wished instruction and baptism. Origen despatched the priest Valentinus. He gained access to her in the tower, instructed and baptized her. Cf. note to the Old French poem, l. 382. For the historicity of the Origen episode, cf. Tillemont, *loc. cit.*

[10] Simon Metaphrastes relates that Barbara gave as her reason for the construction of the third window that thus more light would be admitted and that thus the building would be more handsome. It was only after the bath had been built, when she often used to come there to meditate, that one day she was filled with the Holy Spirit.

hair. He shut her up in a dark prison until he made known her crime to Martianus the Prefect. When brought before him, she refused to sacrifice. Then followed the most horrible tortures, but during it all, Barbara remained firm in her faith. During the night, Our Lord appeared to her, comforted her and healed her wounds. The next day brought forth new sufferings and indignities; [11] her sides were torn open, burning rods were applied to the wounds, she was beaten on the head with hammers, her breast was cut off, she was led naked about the streets. Finally she was condemned to death by decapitation. Her unnatural father undertook to carry out the sentence, and on a mountain he beheaded his only daughter. As he returned, fire descended from heaven, destroyed and consumed him so that not a trace of him remained. Another Christian, Juliana, was martyred with her. A certain Valentinus buried the remains of the Saint.[12] At her tomb many miracles took place.

II. LE VIE SAINTE BARBE

(A) *The Manuscript*

This Old French version of the *Legend of Saint Barbara* is found in a single manuscript, 10295–304 of the Bibliothèque Royale de Belgique in Brussels. It is a compilation of some 42 saints' legends in prose and in poetry. At the end of the manuscript are Old French versions of the *Image du Monde*, the *de Consolatione* by Boethius translated by Renaud de Louhans, the *Bible des laies gens*, and the *Yzopet* of Marie de France.[13] The *Vie sainte Barbe* occupies folios 59r–63r. The manuscript was written by one Jehan Wag' between the years 1428–1429.[14] At folio 103r are found the lines: "escript le jour de la Magdelaine par Jehan Wag' l'an mil iiii^c xxviii." At the end of the *Vie monsigneur saint Martin*, folio 124: "Explicit finis le vie saint Martin, qui fu parfaite par Jehan Wag', l'an mil iiii^c xxviii en jungnet, le xxviiie jour." The place of composition of the manuscript is indicated in some verses found at the end of the *Vie ma damme sainte Kateline*, fol. 158r:

et ossi priies pour celi
qui l'eut escript par samedi
le nuit de la fieste a At,
que il eut fait par nuit bien tard
l'an iiij^c et xxviij
avecques mille, je le vous dy.[15]

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[11] It is at this point that many versions introduce Juliana who, through pity for the sufferings of Barbara and in admiration of the miracle, professes her faith, suffers with Barbara and is beheaded with her. Cf. note to l. 378 of the Old French poem.

[12] In the Coptic version of the *Arabic Jacobite Synaxarium* it is stated that the bodies of the Saints were placed in a church in the town of Galassos. The body of Saint Barbara, it goes on to say, is now in the city of Vieux Qaire in the Church of Aboukir (P. O. III: 305).

[13] The manuscript is described and its contents analyzed by Paul Meyer in his article "Notice du ms. 10295–304 de la Bibliothèque Royale de Belgique," *Romania* XXX (1901), pp. 295–316. Meyer has also printed the first 28 lines of the *Vie sainte Barbe* and the last 8 lines.

[14] Paul Meyer has suggested that the manuscript reading of the scribe's name "Wag' " be expanded to "Wagon." However, the ' sign seems to indicate the palaeographical sign for "–us." A better reading might then be "Wagus," that is "Vagus."

[15] The town of Ath is situated in Hainault, Belgium, some fifty kilometres to the southwest of Brussels, on the Brussels to Calais Railway, on the left bank of the Dender. The feast in question is rather difficult to determine since in that year the vigils of Pentecost, Easter and Christmas fell on a Saturday. There is, however, another feast which is important at Ath. That is its annual fête called "le jour de ducasse." "Ducasse" is the Walloon form of the Old French "dicace" from the Latin "dedicatio." It generally indicates the anniversary celebration of the dedication of a church. Hence it is equivalent to the German "kermesse." At Ath, "le jour de ducasse" is held on the fourth Sunday of August just as it is until this day. Hence the Saturday in question might well be

Finally at folio 230, at the conclusion to the *Yzopet* of Marie de France, are the following verses:

> et se doinst Diex santet et joie
> a celui qui recopiiet l'a,
> parfait le nuit c'on vous dira
> tout droit c'on dist le Pentecouste
> c'est bien a savoir et peu couste
> avoecque mille et quatre cens
> et xxix.

On the reverse side of the guard-folio, that is, folio 386v, we read:

> En ce livre sont contenues pluisieurs vyes
> de sains et de saintes, en rime et en prose,
> lequel est a monseigneur Charles de Croy,
> Comte de Chimay.

The manuscript, then, was apparently begun by the scribe Jehan Wag' in 1428 for Charles de Croy who was godfather to Charles the Fifth. It was completed on the eve of the Feast of Pentecost in the year 1429.

(B) *The Dialect of the Poem*

The following dialectal traits are to be observed in the poem.

(1) The stop articulation of "k," initial in the word or syllable, before Gallo-Roman "a" is retained throughout: cascun 35, 135, 444, etc.; cose 49, 110, 123, etc.; castelet 61; etc.

(2) The stop articulation of "k," initial in the word or syllable, before Gallo-Roman "e" or "ie" originating from "a," is generally retained: cemin 148; rice 241; blance 411, 419; cief 461. Cheviaus 214; chevalier 439, 458, 475; chief 131, are exceptions to this general tendency.

(3) In the word vengance 63, the stop articulation of "g" initial in the syllable before Gallo-Roman "a" seems to be retained. Yet joie 508.

(4) "K" initial in the word or syllable followed by Latin "e" or "i," "ki" initial and intervocalic, and initial "ti," which in Francian develop to the sound "ts" written "c," appear as "ch" apparently with the value of "tš": terche 114; machon 161; fianche 487; etc. On the other hand the spelling "c" appears in the majority of such words: cest 47, 434; maçons 69; terce 115, 180; cierte 284; etc.

(5) Vulgar Latin "ę," tonic and checked, diphthonizes fairly regularly: bielle 16, 66, 239, etc.; fieste 107, 283, 460; tierche 141; cierte 284; etc. On the other hand: belle 8, 38, 203; terre 95, 247, 448; apres 459; etc.

(6) The group "ts" has shifted to "s." The symbol "z" is not used in the text.

(7) Final unsupported "t" after tonic vowels is retained in: marit 52, 58; clartet 169; defiat 44; etc. On the other hand: clarte 9, 173; salu 105; verite 394, 474; etc.

(8) The diphthong "ié" when juxtaposed to "ẹ" is reduced to "íe": solatie 90; batisie 145; lessie 291; liement 460, 496; etc.

(9) The diphthong "oi" is reduced to its first element in: histore 3; lavatore 99, 111; glore 100, 271, 354; memore 353, 364, 443. But lavatoire 73.

(10) The diphthong "ai" does not appear in masielle 15; defallir 326; orison 417.

(11) The diphthong "ue" does not appear in cour 136, 431, 496. But coer 311, 320, 502; oevre 77, 84; estuet 85; etc.

(12) Only in lius 13, is the triphthong "ieu" reduced to "iu." Otherwise Dieu 1, 28, 50, etc.; mieus 62; lieus 172; etc.

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the eve of the "ducasse" since in that year the fourth Saturday of August fell on the 28th.

(13) The triphthong "eau" is differentiated to "iau": biaute 17, 40; pastoryauls 193; agniaus 194; etc.

(14) Atonic "oi" is reduced to "i" before "ss" in pissons 248; congnissance 446, 484, 488; But damoisielle 7, 16, 20, etc.; defroissiet 150; confroisiai 253; poissance 328.

(15) Pretonic "ẹ" is raised to "i" before palatal "n" in signour 77, 83, 100, etc.; and in nient 114.

(16) Preconsonantal "l" after "i" vocalized to "u" in fils 282, 303, 504; cieus 172; cils 304. But fis 179; peris 366, 503.

(17) The interconsonantal glide between the groups "n–r" and "l–r" is undeveloped in venrai 56; vorai 269. But estaindre 316; mieudres 244. The glide regularly appears between the group "m–l" in samblant 152, 430; ensamble 378; samble 379.

(18) Atonic "e" in hiatus before a vowel is retained in: beneiçon 290; creoit 30, 34. It has disappeared in benoite 31; viesture 411, 418; juneront 350; junera 365; junoit 444; junee 480.

(19) For ọ tonic and free, "ou" appears in colour 15, dolour 54, signour 77, 83, 100, etc.; but signeur 124, oudeur 276, pluseurs 391.

(20) The diphthong "ǫu" has differentiated to "eu" in peu 451; to "au" in claus 224; pau 67; ot 405, 486; sot 106.

(21) The diphthong "ai" is retained except in ses 348; feres 74; ferai 270, 347, 408; lessie 291.

(22) Nasalized "a" appears for nasalized "e" in tamps 55, 56, 424, etc.; anuy 102; anemis 457; samblant 152, 430; etc.; But temps 67; commence 315; prendre 315; etc. Nasalized "e" appears for nasalized "a" in mengier 216.

(23) The labial consonant in the intervocalic group "pl" has opened to "u" in peule 189.

(24) The stressed form of the Latin "bonum" (Francian bu̯ẽn) is retained with the spelling boin: boine 78, 308; boin 144, 467, 496; boins 354. But bon 136.

(25) Flexional "s" is added to the nominative singular masculine cil: cieus 172; cils 102, 304. But cil 101.

(26) Mute "e" within the word is omitted before "r": crerai 307, 308; lairay 310. But forceray 309.

(27) The Picard present indicative, first person singular appears in oć 167. Otherwise the first person present indicative appears without any analogical ending except in puis 18; prie 472.

(28) The future and conditional of savoir and avoir appear without the labial element: saroit 11; aront 353, 364.

(29) The present subjunctive, first person plural appears with the suffix "-iemes": puissiemes 510.

(30) The imperfect subjunctive, third person singular appears with "ai" in alaist 94. Otherwise pensast 92; donnast 446.

(31) The feminine definite article appears as "le" in the proportion of about one to three.

(32) The feminine personal pronoun, direct object, appears usually as "le"; as "la" only three times in the course of the poem.

(33) The dialectal form of the possessive pronominal adjective appears only in "vos" 103, and "sen" 417 which precedes a feminine noun beginning with a vowel, — sen amie. "Se" appears for "sa" in l. 40.

(34) The nominative singular appears with analogical "s" in peres 43, 68, 124, etc.; rois 100, 271, 419, etc.; hons 381; esfondres 427; without analogical "s" in pere 21, 120, 230; roy 174, 202; fel 195; maistre 117; baptistre 144; prouvost 237; sire 432, 436.

(35) In the vocative case, nouns of the masculine declension appear with "s," except the third classical Latin declension which appears regularly without "s." But rois 354.

(36) Adjectives of the third classical Latin declension appear without the analogical feminine "e" except in grande 341, 494; quelle 448.

(37) Adjectives of the third classical Latin declension appear without the analogical "s" of the masculine singular nominative: fel 313, 329, 368.

(38) Other dialectal features are found in individual words and forms: hastieument 225; puelent l. 251, modeled on the corresponding form of "vuelent"; consieuis l. 376, the past participle, and consieuist l. 427, the past definite of the verb consiure; veïr 94, but veoir 456; femme 241, femmes 433; applire 312; fremer 61.

The dialectal traits of the poem will be seen to belong to the North of France, and especially to the Northeast. Since the place of composition of the manuscript was in Hainault, one would expect to find in it the characteristics of the dialect of Hainault. They are found.[16]

(C) *The Dialect of the Poet*

With regard to the dialect of the poet, an examination of the rime and syllable count leads to the following conclusions:

(1) The poet has rimed "íe" < "iée" < "iáta" with itself and with "íe" < "íta": batisie: raemplie 145: 146; amie: ensongnie 359: 360; lessie: ensignie 291: 292; solaciie: souagie 305: 306. Solatie 90, is demanded by the syllable count.

(2) The rimes sacrefisce: piece 345: 346 and priiere: escondire 347: 348 show the reduction of "ie" to "i."

(3) The rime of "ie" < "ę" tonic and checked, is with itself as in damoisielle: bielle 65: 66; or with "e" < "ę" tonic and checked, as in damoisielle: belle 7: 8. This may be due to the copyist. An exception occurs in the rime of feniestres: maistres 155: 156 where the "ie" of feniestres has the value of "ę" to rime with "ai" (ę) of maistres. Otherwise "e" from "ę" tonic and checked rimes with itself.

(4) "Ẹ" tonic and free preceded by a palatal results in "ie" instead of Francian "i." This "ie" rimes with the "ie" resulting from "ę" tonic and free: piere: chiere 133: 134.

(5) In two cases palatalized "l" is found riming with simple "l"; ville: fille 371: 372; pareille: nouvelle 3: 4.

(6) "Ọ" tonic and checked rimes with "ǫ" tonic and free; jour: cour (cŏr) 135: 136. The value of cour (cŏr) is seen in the rime cour: souscours 431: 432.

(7) "Ọ" tonic and free rimes with "ǫ" tonic and free; signour: cour 495: 496.

(8) "Ọ" tonic and free rimes with "ou" (u); dolours: souscours 299: 300; souscour: creatour 463: 464. On the other hand we find the Francian rime of precieuse: amoureuse 264: 265; glorieuse: precieuse 383: 384.

(9) The poet has rimed espose: cose 49: 50; espouse: enclouse 215: 216.

(10) The rime of prois < *prọdis with drois < dirẹctus 115: 116; droit < dirẹctum with proit < *prọdem 167: 168 shows that "u̯ę" resulting from "ę" tonic and free had labialized to "ö."

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[16] Compare the Chartes which appear in Schwan-Behrens' *Grammaire de l'ancien français* (Leipzig, 1923), translated by Oscar Bloch, part iii, Chartes nos. X, XI, XII, which illustrate the dialect Hainault Belge of the middle of the thirteenth century. Pp. 13–19.

(11) Iaus<-ellos rimes only with itself.

(12) "An" and "en" are not rimed together except in loenge: ren ge 341: 342.

(13) The rime of tirans: mains 329: 330 and prendre: estraindre 315: 316 shows that the diphthongs "ã͡i," "ẽ͡i" have been reduced to their first element.

(14) Final unsupported "t" is found in rime in clartet: trinitet 169: 170; decollet: appellet 461: 462. That it was mute is indicated in the rime otria: defiat 43: 44.

(15) Only in fianche: connissance 487: 488 is Northern "tš," rimed with Francian "ts." The rime of sacrefisce: piece 345: 346 shows the Francian development.

(16) The rimes lavatore: glore 99: 100 and memore: glore 353: 354 may be due to the copyist.

(17) The analogical "e" of the feminine adjective from the third Latin declension is rare. Grande 340, 494 both in the phrase "grande devotion" is demanded by syllable count as is quelle 448. Otherwise the old suffixless forms are used.

(18) The two case declension is carried through fairly scrupulously. Pere the nominative singular 21, 229 is demanded by rime. The same form instead of peres 68 would emend a hypermetric line in allowing elision. The nominative singular sergant 153 is attested by rime as is sergans 144. Chevaliers 475 and capellains 470 are both attested by rime.

(19) The analogical "s" or "e" in the first person singular present indicative does not appear in "croi" 40, 232, 307 as the rime attests. Prie 472, however, is attested by rime. On the other hand, say 394 and di 279 are both attested by the rime.

(20) Atonic "e" in hiatus is retained in creoit 30, 34 and beneiçon 290 as the syllable count attests. It has disappeared in benoite 31, viesture 411, 418 and in the various forms of the verb "juner," 350, 365, 444, 480.

(21) "E" mute within the word disappears in contact with "r." This is seen in the future crerai 307, 308, 310 as the syllable count attests, in mariray 242. On the other hand forceray 309 is likewise attested by the syllable count.

Numbers (1), (3), (4), (5), (6), (11), (12), (13), (14), (16), (20) indicate Picard origin.

Numbers (2), (4), (5), (7), (10) are indicative of the dialect of the Northeast of Lorraine.

Number (9) belongs to the dialect of the Southeast of France.[17]

Hence we may conclude that the author was of the Northeast of France, probably not far from the town where later the poem was transcribed into the manuscript as we now have it, that is somewhere in the district of Hainault.

In fact, the cult of Saint Barbara was particularly strong in Northern, Northeastern and Eastern France and in Belgium. Possibly the earliest evidence of her cult in Belgium is the transference of her relics in 985 from Rome to Ghent. In the *Annales sancti Bavonis Gandensis*, under the year 985, it is related that the venerable Erembold, then a monk, but later the Abbot of the Monastery, brought from Rome relics of Saint Barbara and those of Saint Pancratius together with those of many other saints to the Monastery of Saint Bavon.[18] Under the year 1080, on the first Kalends of August, took place the translation of these same relics in the Monastery by Wichmannus, Abbot of the Monastery,[19] possibly after the completion of the work of enlarging the Church and Choir, begun by Abbot Odwin in the year 985.[20]

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[17] Cf. M. K. Pope, *From Latin to Modern French* (Manchester, 1934), no. 526.

[18] M. G. H., Scriptorum, II (Hannoverae, 1829), p. 188.

[19] *Ibidem*, p. 190.

[20] *Ibidem*, p. 188.

In an anonymous history of the foundation of the Priory of Sainte-Barbe-en-Auge, in the diocese of Lisieux, it is related how Odon Stigand, or Stigaud, first founded it under the title of Saint Martin and gave it to the charge of six secular canons.[21] Odon was Chamberlain to Isaac Comnenus and Constantine Ducas, Emperors of Constantinople, the latter of whom was crowned in 1059. The historian records that Odon died on the 27th of November without, however, giving the year of his death. Since Maurile, Archbishop of Rouen, who died in 1067, was present at his funeral in the Church of Saint Ouen, Odon must have died shortly before him.

During the father's lifetime, the eldest son Robert had made a voyage to Greece. His only brother Maurice was miraculously cured of a serious illness at the intervention of Saint Barbara. From Greece, Robert brought back the body of the Saint. That was sufficient to popularize her cult and to cause a church to be built in her honor at the very spot where stood the castle of their father, Odon Stigand, called Mesnil-Odon (mansio Odonis), and to-day, Mezidon. The two brothers died without issue and their property passed into the hands of their brother-in-law, Rabel de Tancarville. On the occasion of another miraculous cure, Rabel enlarged and enriched the Church of Saint Barbara and in 1128 introduced into it the Augustinian canons from Eu. Their first prior was Guillaume d'Evreux who died in 1153.[22]

There is extant a Sacramentary of the same Church of Sainte-Barbe-en-Auge of the end of the twelfth century, after 1173, since it contains the Mass of Saint Thomas of Canterbury.[23] In the Proper of the Saints is given the Mass for the Feast of Saint Barbara, December 4th, and among the Prayers of the Votive Masses there is one "de reliquiis memoria." The prayer runs as follows: "Propiciare, quaesumus, Domine, nobis famulis tuis, per gloriosa merita sanctorum tuorum Martini, Augustini, Barbarae et eorum quorum reliquie in presenti continentur ecclesia. . . ."[24]

Examining the Sacramentaries and the Missals which make mention of Saint Barbara in the Collection made by Abbé V. Leroquais for France, from the beginnings until the end of the fifteenth century, with very few exceptions, all of them will be found to belong to the Northern, Northeastern, and Eastern parts of France. In those regions we find evidence of her cult and popularity quite early. Besides the Sacramentary of Sainte-Barbe-en-Auge, already mentioned, her name is found in two others, in that of Liessies,[25] and in that of Saint-Amand,[26] both of the second half of the twelfth century. In the second half of the twelfth century, her name is included in a Litany of the Saints in a Missal in use at the collegiate church of the Madeleine at Besançon.[27] The prayer of a Mass in her honor is found in a Missal of Fécamp [28] of the beginning of the twelfth century, and her Mass in a Missal of Cologne [29] of the year 1133. Also of the twelfth century is a Missal of a Norman Abbey in which her name is included in a Litany of the Saints to be said on Holy Saturday.[30] Her Mass appears also in a Missal of Marchiennes in the diocese of Douai,[31] and in a Missal of Saint-Remi de Reims,[32] both belonging to the end of the twelfth century.

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[21] Cf. A. duMoustier, *Neustria Pia* (Paris, 1663), pp. 724–727.

[22] Cf. *Histoire littéraire de la France*, XIV, pp. 601–603.

[23] V. Leroquais, *Les sacramentaires et les missels des manuscrits des bibliothèques publiques de France* (Paris, 1924–1927), pp. 347–349.

[24] *Ibid.*, p. 349.

[25] Leroquais, *op. cit.*, I, p. 262.

[26] *Ibid.*, p. 271.

[27] *Ibid.*, p. 174.

[28] *Ibid.*, p. 196.

[29] *Ibid.*, p. 216.

[30] *Ibid.*, p. 239.

[31] *Ibid.*, p. 357.

[32] *Ibid.*, p. 363.

Belonging to the middle of the thirteenth century is a Cistercian Missal.[33] In it is found the prayer which is to be said in the Mass in her honor. Also of the thirteenth century is a Missal of Saint-Amand [34] in which her Mass appears in the Proper of the Saints. Later than these is a Roman Missal of Breton origin of the second half of the fourteenth century which contains the Office of Saint Barbara.[35] Also of the fourteenth century, but of the first half, is a Missal of Bruges adapted to the use of Paris wherein the Mass of Saint Barbara appears in the Proper of the Saints.[36] Only a commemoration is made of her feast in a Carmelite Missal of the first half of the same century,[37] while only the third lesson of her Office appears in a Missal of Sainte-Catherine-du-Mont in the diocese of Rouen.[38] Belonging to the second half of the century, the Mass of Saint Barbara is found in a Missal of the Abbey of Montier-en-Der in the diocese of Langres.[39]

During the second half of the fifteenth century, the Mass of Saint Barbara is found in a Missal of the Abbey of Souvigny [40] which contains only the principal feasts; in that of Cologne; [41] and in a Missal of Saint-Dié.[42] At the end of the fifteenth century, her Mass appears in a Missal of Saint-Victor of Paris,[43] while in a Missal of Utrecht for the use of Leyden her name appears in the Litany of the Saints to be said on Holy Saturday.[44]

Thus it may be seen that with few exceptions, — the Cistercian Missal of the thirteenth century, that of Souvigny of the fifteenth, and that of Saint-Victor of Paris at the end of the fifteenth century, — the Missals in which her feast is mentioned, or her name honored, are of Northern, Northeastern, or Eastern origin. It is in these districts apparently that her cult arose and grew to the proportions that it assumes in the sixteenth and in succeeding centuries throughout France.[45]

(D) *The Date of the Poem*

In his analysis of the contents of the manuscript Paul Meyer notes when he speaks of the *Vie sainte Barbe* that the poem "ne peut guere être antérieure à la fin du XIIIe siècle." [46] There is nothing in the language of the poet that would indicate that the poem is later than the date assigned it by Paul Meyer except perhaps the fact that he rimes simple "l" and palatalized "l." That peculiarity is noted generally in poets of Northern and Northeastern origin in the fourteenth century.[47] Moreover, as has been pointed out, the poet made use of the *Legenda Aurea* by Jacobus de Voragine.[48] That compilation was made by Jacobus between 1255 and 1258.[49] Therefore, it is safe to say that the poem was written somewhere about the end of the thirteenth century or the beginning of the fourteenth.

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[33] Leroquais, *op. cit.*, II, p. 112.

[34] *Ibid.*, p. 143.

[35] *Ibid.*, p. 328.

[36] *Ibid.*, p. 227.

[37] *Ibid.*, p. 216.

[38] *Ibid.*, p. 180.

[39] *Ibid.*, p. 307.

[40] Leroquais, *op. cit.*, III, p. 198.

[41] *Ibid.*, p. 57.

[42] *Ibid.*, p. 175.

[43] *Ibid.*, p. 222.

[44] *Ibid.*, p. 251.

[45] For a sketch of the *Legend of Saint Barbara*, as Patroness of students, artillerymen, miners, firemen; as Protectress against thunderbolts, unhappy death, final impenitence; of her appearance in Art from the thirteenth century on, in literature, cf. Le Comte de Lapparent, *Sainte Barbe* (Paris, 1926).

[46] "Notice du ms. 10295–304 de la Bibliothèque royale de Belgique," *Romania* XXX (1901), p. 304.

[47] H. Chatelain, *Recherches sur le vers français au XVe siècle* (Paris, 1908), p. 60.

[48] Cf. *infra*, pp. 166–69.

[49] E. C. Richardson, *Materials for a life of Jacopo da Varagine* (New York, 1935), II, pp. 4–12.

Le Vie Sainte Barbe

QUI a talent de Dieu servir
Si viegne avant pour moy oÿr;
Histore voel conter nouvelle,
Piecha n'oïstes la pareille.
Sachies que ce n'est pas d'Ogier,
Ne de Rolant ne d'Olivier,
Mais d'une sainte damoisielle
Qui par tant fu courtoise et belle.
La grant clarte de son cler vis
Nus sages clers, tant soit apris,
Ne le saroit (dou) [1] tout deviser;
Mais un petit en voel conter.
fol. 59b Le chief ot bloncq com lius pares,
Bien fait le vis et bouce et nes,
Coulour avoit en sa masielle;
Mout estoit bielle damoisielle.
Le grant biaute de sa faiture
Ne le puis exposer par escriture.[2]

Or escoutes! Que Diex vous garde!
La damoisielle ot a non Barbe; [3]
Dyoscorus ot non ses pere,
Mais je ne sai coment sa mere.
Haus hons estoit et mout courtois,
Toudis faisoit mout grans conrois;
Siergans avoit et vavasais
Qui siervoient par son palais.
Paiiens estoit et mescreans,
fol. 59va E la pucielle en Dieu creans;
Le Pere, le Fil, le Saint Esperit [4]
(lui) Mout bien creoit par fine espir,[5]
Et la benoite vierge Marie[6]
Amoit par fine jalousie;
Les dis comans, les sacremens
Mout bien creöit par [fine] sens.[7]

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[1] The manuscript reads "dou tout." A hypermetric line may be corrected by omitting "dou," which is unnecessary.

[2] The line is hypermetric. A possible emendation may be to read "nel puis exposer par escriture" with "le" enclitic to "ne."

[3] Assonance and not rime.

[4] The first half of the line is hypermetric. It may be emended by reading "et" instead of the article. This would allow elision between "pere" and "et." "Esperit" is dysllabic.

[5] Hypermetric. "Lui" appears to be scribal. Cf. l. 34. Assonance.

[6] The line is hypermetric unless a cesura be allowed after the fourth syllable with a feminine ending. Of the same type are ll. 139, 176, 205, 272, 279, 284, 290, 307, 308, 368, 387, 466, 469.

[7] The Manuscript reads "feme sens." "Fine" is used in two cases, in ll. 30, 32, to express a superlative or to an extreme degree the substantive in question. In one of the cases, l. 32, the substantive is feminine. In the other case, the substantive is masculine. In l. 34, the feminine form is demanded by the syllable count. In l. 30, the feminine form may be used with elision of final "e" before "espir." Apparently "fine" used in this sense, perhaps because of its frequency of use with feminine nouns, by analogy was used also with masculine nouns. No examples are to be found in Godefroy.

Tout çou cascun jour recordoit
36 Quand elle toute seulle estoit.

Or escoutes de la pucielle
Qui tant par fu courtoise et belle.
Mout de haus hommes de la loy
40 Par se biaute, si com je croy,
Le requeroient par mariage,
Et offroient grant hiretage.
Li peres pas ne l'otria,
44 nel contredist, nel defiat.
Tantost sa fille a apiellee
Et sa volonte demandee
Qu'elle dira de cest afaire,
48 Ou qu'elle a enpenset a faire.
Mout se miervelle de tel cose
Sainte Barbe, le Dieu espose,
Et respondi par mautalent
52 Que de marit n'avoit talent.
"Pere," fait elle, "par amour,
Relaissies moy de tel dolour.
Jovenete sui de poy de tamps,[8]
56 A ce venrai-ge ases a tamps."

Dyoscorus, quant ce entent
Que de marit n'avoit talent,
Mout fu dolans et esbahis;
fol. 59^{vb} 60 De la mout tos s'en est partis.
Un castelet a fait fremer
Pour sa fille mieus agarder.
Çou ne fist il pas pour vengance
64 Mais pour l'embler dont ot doubtance,
Car mout estoit la damoisielle
Couvoitable, plaisans et bielle.
Quant vint, apres un pau de temps,
68 Li peres a son nouviel pourpens,[9]
Maistres maçons a fait mander
Qu'a lui viengnent sans ariester,
Qu'a lui viegnent hastieuement.
72 A tous son appareillement,
Un(e) lavatoire, leur devise: [10]
"Et si le feres en tel guise,
Deus fenestres viers orient
76 Et de marbre le pavement."
"Signour," fait il, "faites haut[e] oevre,[11]
Et si me faites boine estuevre.
Cascuns en prenge a son talent,

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[8] "Jovenete" is trisyllabic.

[9] Hypermetric. May be emended by the omission of "son."

[10] "Lavatoire" is listed by Godefroy as masculine. The use of it as feminine would make the line hypermetric. It is masculine in l. 99 and should be in l. 111.

[11] The manuscript reads "haut."

N'espargnies or në argent.[12]
Estre me faut en grant songne,[13]
Aler m'en faut en grant besongne."
"Signour," fait il, "or de l'ouvrer
Penses de l'oevre maneiier.
Issir m'estuet de cel païs,
Dou revenir ne sui pas fis.
A ma fille pores parler
Et vos de fautes demander."
Puis a sa fille visetee
Et solatie et confortee.
fol. 60a A pardefin mout li pria
Que de l'ouvrage bien pensast,
Souventes fois en la semaine
Alaist veïr l'oevre hautaine.
Ales s'en est en estragne terre,[14]
Mais je ne say qu'il ala quere.
Pour lui remest la damoisielle,
Sainte Barbe, le Dieu ancielle.

La dame vint au lavatore:
"Signour," fait elle, "li Rois de glore,
Cil[s] soit en vous et vous en lui,[15]
Cils vous gart de tou[t] anuy." [16]
Fait elle, "vos ruit est(es) vous fort,[17]
Vous pui ge faire nul confort."
Cascuns li rent un gent salu
Si com il sot et apris fu.
Grant fieste font trestout li maistre
De sainte Barbe, lor droit maistre.
"Signour," fait elle, "or entendes!
D'une cose mespris aves.
Un(e) lavatore aves ci fait,[18]
Encontre Dieu aves mesfait;
Deus feniestres viers orient [19]
Sans la t[i]erche chou est niënt.[20]
Faittes la terche, çou est prois,
Et bien sacies que çou est drois."
Respont li maistre des ouvriers:
"Damme," fait il, "mout volentiers,
Et ne quidies, ce sachies bien,
Vostre pere (n')en dira ja bien.[21]

---

[12] The line lacks a syllable. The conjunction "et" would emend it.

[13] The line lacks one syllable. Perhaps "grant" might be emended to the feminine "grande," yet the suffixless form is usual, or was "songne" originally "essongne?"

[14] Hypermetric. "S'en" might be omitted.

[15] The manuscript reads "cil." I have corrected it to the Northern form which appears in the following line.

[16] The manuscript reads "tous." The line lacks a syllable. It may be that we should read "garde" with the analogical "e" of the present subjunctive.

[17] The manuscript reads "estes" making the line hypermetric. The line would seem to mean "your task is a difficult one."

[18] "Lavatore" again appears as feminine, as in l. 73. Its use as masculine as in l. 99, emends a hypermetric line.

[19] The manuscript reads "deus feniestres aves viers orient." "Aves" was very likely copied from the line above.

[20] The manuscript reads "trerche."

[21] The line is hypermetric. It may be emended by the elision of "n" as the sense requires.

Car il voloit outreement
Deus feniestres tant seulement."
Et respondi la sainte cose:
fol. 60^{b} "Signeur, se mes peres vo[us] cose [22]
Dittes li bien çou ai ge fait.
Je sui cause de ce mesfait."

Ly maistre font a son talent,
Trois feniestres viers orient.
La Dieu amie, sainte Barbe,
Viers orient dedens un marbre [23]
A fait le singne de le crois
De Jhesucris[t] d'un de ses dois.[24]
La crois remest ens en la piere
Si com fait seauls en chiere; [25]
Le signe veoient cascun jour
Qui le requeroient de bon cour.[26]
Apres entra en la piscine
Qui jamais n'iert sans medecine;
Tamaint malades i sont sanes [27]
Et aveules renlumines.
En la piscine premeraine
Ven[oit] sourdant une fontaine.[28]

La vint messire sains Jehans,
Baptistre Dieu et boin sergans;
La damoisielle a batisie,
Del saint Espir est raëmplie.
Tantost s'en est mise el retour,
Tous les cemins devant le tour,
Les dieus son pere a despeciet
Et degabet et defroissiet.
Et puis se dist nostre sergant:
"Trestout a vous soient samblant."

Dyoscorus de son voyage
Est repairies a son ouvrage.
Viers orient voit trois feniestre[s],[29]
fol. 60va A soy apielle tous les maistres.
"Signour," fait il, "qu'aves vous fait?
Encontre moy aves mesfait;
Trois fenestres aves ouvrees
Que deus n'avoie devisees."
Respondent tout li machon: [30]

---

[22] The manuscript reads "vo." The scribal sign for "–us" has been omitted.

[23] Assonance alone exists between lines 129 and 130.

[24] The manuscript reads "Jhesucris." The oblique form is required.

[25] The line lacks one syllable. Perhaps "en la chiere."

[26] Hypermetric. May be emended by making "requeroient" singular. "Veoient" of the line above would allow the singular, provided "veöit" be disyllabic.

[27] Hypermetric. Read "Maint malades . . . ?"

[28] The manuscript reads "venant."

[29] The manuscript reads "feniestre." The plural is required, as is shown by the rime.

[30] The line lacks one syllable. The indirect personal pronoun third person singular might be supplied, or the transitional "donc."

"Sire, entendes nostre raison.
Vostre fille le nous fist faire,
Encontre vous no[us] fist mesfaire." [31]
Tantost sa fille demanda
Pour quoy tel cose commanda.
"Pere," fait elle, "je oć grant droit,
Deus feniestres ne font nul proit;
Deus ne rendent point de clartet.
Trois demoustrent la trenitet,
Car tout ensi que vous vees
Que tous cieus lieus est alumes
D'une clarte par trois fenestre,[32]
Ensi le voet le roy celestre.
Tous nous a donnet dëite
Par trois personnes enlumine;
Les trois personnes nommeray,
Car bien le croy et bien le say,
Çou est li Peres et li Fis
Et la terce est sains Espirs." [33]

Dyoscorus, quant l'entendi,
Par grant aïr s'espee prist;
Encore n'estoit desporonne [34]
Ne de s'espee desarme
Puisqu'il revint de son voiage.
Mout li semont nouvelle rage;
fol. 60^{vb} La damoisielle ferir vot
Mais grasce a Dieu car il ne pot.
Veant le peule qui la estoit,
La piere ou sus elle estoit
Hors de le place l'emporta
Haut sur un mont le transporta.
As camps avoit deus pastoryauls,
Brebis gardoient et agniaus;
Li fel apres sa fille ala,
As pastouriaus le demanda.
Li uns se taist, l'autre respont:
"Vella, sire, sur cel mont." [35]
La damoisielle le maudist.
Li patouriaus grant perde fist;
Ses brebis devinrent laouste.
Ensi le voet le roy celestre.[36]
Entour le tombe de la belle,

---

[31] The manuscript reads "no." The palaeographical sign for "-us" has been omitted.

[32] "Fenestre" the oblique plural appears without the flectional "-s." Cf. l. 154. Correcting it to its proper form would necessitate the correction of "celestre," the rime word, to "celestres." Probably one might better read "li rois celestres" in l. 174.

[33] Hiatus is required between "terce" and "est." The rime of Fis: Espirs indicates that preconsonantal "r" has been assimilated to the following "s." Cf. *Roman de Troie*, ed. L. Constans (Paris, 1912), VI, p. 130.

[34] The line is hypermetric. The form "encor" instead of "encore" would correct it.

[35] The line lacks one syllable. Perhaps read "messire."

[36] Neither assonance nor rime exist between ll. 201: 202.

De sainte Barbe, la pucelle,
Yces laouste vont sautellant
Et leur offisce demenant;
Tres puis y ont este, encore sont,[37]
Et a tousjoursmais y seront.

Dyoscorus aqueurt avant [38]
Qui voit sa fille Dieu priant;
Batue l'a li fourjugies,
Li mescreans, li escumeniies; [39]
Et si la [trait] aval cel mont [40]
Par ses cheviaus qui tant sont blont.
En une cartre l'a enclouse
fol. 61^{a} Sainte Barbe, la Dieu espouse;
Garder le fist tout sans mengier,
Tout sans confort, sans solaciier.
Au prouvost vint de la cite
De sa fille li a compte:
"Venes o moy," fait il, "errant;
Ma fille va nos diex faussant.
En celui croit qui fu penes,
En crois pendus, en claus fikes."
Li prouvos vint hastieuement,
Tantost s'asist au jugement;
La damoiselle demanda.
"Ou est," fait il, "ceste dervee?" [41]
"En carte gist," ce dist li pere.
Dist li prouvos ens en un fier: [42]
"Ca[r] la menes par devant moy.[43]
Par icel dieu en cui je croy,
A honte le ferai morir
Se nostre loy ne voet tenir."

Dyoscorus l'a amenee
Et es mains dou provost livree.
Li provost l'a araisonnee
Et par prommesse alourdee.
"Bielle," dist il, "entent a moy.
De ton errour si te recroy;
Mout rice femme toy feray
Et hautement te mariray."
"Prouvos," fait elle, "taisies vous.
Mes maris est mieudres de vous;
fol. 61^{b} Il a tout l'or et tout l'argent,
De nous tout fait a son talent.

---

[37] Hypermetric. Emend by omitting "y" and by reading "encor" instead of "encore."

[38] "Aqueurt" is of course the third singular present indicative of the verb "acorre" from the Latin "adcurrere."

[39] The last half-line has one syllable in excess. Omit the second "li."

[40] The manuscript reads "tant." The obvious correction is "trait."

[41] Neither rime nor assonance exists between these two lines.

[42] "Fier" is used substantively; apparently the adverbial phrase "ens en un fier" is to be translated "wrathfully."

[43] The manuscript reads "ca."

Et ciel et terre et tout crea,
Pissons, oysiaus, quanqu'il y a.
Li vostre diex est diablerie;
Il n'ont ne force ne aÿe,
Ne puelent nuire në aidier,
Il n'ont poöir d'iaus avengier.
Les diex mon pere confroisai,
Pour lor poöir nel laiss[er]ay."[44]
Li fel[s] se prist a couroucier; [45]
La damoisielle a fait loiier;
Puis le commande a desnuer,
De niers de tors batre et tuer,[46]
Et puis de pieces d'une haire [47]
Par tout son cors presser et traire.
Parmi les plaies de son cors
De toutes pars li sans ist fors.

Or est la gemme precieuse
Tant plus enviers Dieu amoureuse.
Li prouvos le fait remettre en cartre [48]
Sainte Barbe, la digne damme.[49]
"Signour," fait il, "garde le bien,
Car une cose vous di ge bien;
Traitier vorai et deviser
Par quel tourment le ferai finer." [50]
A mi[e]nuit li Rois de glore [51]
Vint a le cartre par porte close; [52]
Droit a s'amie est descendus,
Pour li solaciier est venus.
fol. 61va La cartë est toute enbausmee
De grant oudeur enbausumee.
"Bielle," dist Diex, "or soiies forte,
Ouverte t'ai dou ciel la porte.
A la parolle que je te di
Dois tu bien croire sans contredi.
Je sui tes Diex, je sui tes Sire,
Je sui Jhesus, li fils Marie.[53]
De ton martir[e] fai ge fieste [54]
Cela te di ge tout a cierte." [55]
Puis li saina trestout le corps

---

[44] The line as it stands in the manuscript lacks a syllable. The future seems called for with the verb "laisseray," that is, "I shall not desert Him for all their power."

[45] The manuscript reads "fele."

[46] Godefroy in his Supplement, vol. X, lists "tuer" with the meaning, "abattre à force de coups."

[47] "Haire," i.e., a hair-shirt. This line is intended to render the Latin "Deinde cum vellent ei efficere sensum acerbiorem, jubet plagas cilicio atteri."

[48] The line is hypermetric. One might read "mettre."

[49] Assonance and not rime.

[50] "Ferai" must be monosyllabic to maintain the rhythm.

[51] The line lacks one syllable. The manuscript reads "mi."

[52] Assonance.

[53] Assonance.

[54] The manuscript reads "martir" as also does l. 286. The use of the form "martire" corrects a metrically bad line.

[55] Assonance.

Del martir[e] qui tant fu fors,[56]
Et li promet sa compagnie
S'en tel propos fiṇe sa vie.
Le Crois li fait en my le froncq [57]
Et se li donne beneïçon.
El ciel remonte se l'a lessie
La pucielle bien ensignie.

L'endemain sist au jugement
Martianus mout aspremement;
La damoisielle a fait mander
Et sa sentense presenter.
La sainte vierge voit sanee.
"Dy moy," fait il, "qui t'a curee
De tes plaies, de tes dolours,
Dy qui t'a fait si grant souscours."
Dist la pucielle: "Jhesucrist
Qui tout crea et qui tout fist,
Li fils de la viergene Marie,[58]
fol. 61^{vb} Cils m'a anuit toute garie,
Et confortee et solaciie,
Et (de) tous mes maus asouagie.[59]
En lui crerai ge et en lui croy,
En lui crerai ge par boine foy;
De lui servir m'en forceray,
Pour a morir ne le lairay."
Martianus a au coer grant ire.[60]
La damoisielle a fait applire;
Desquirer le fait li fel tirans [61]
De dens de fiẹr trestous les flans.
Lampes ardans commence a prendre
Par tout son cors presser et estraindre.[62]
Et puis li fait la folle bieste
D'un mal de fier batre le tieste.
Ou ciel regarde la pucielle,
Nostre Sire de coer apielle:
"Sire," faiṭ [elle], "entens a moy.[63]
Tous ces tourmens soeffre pour toy;
Vous estes, Sire, mes confors,
Et mes solas et mes depors.
Aidies moy, Sire, tout souffrir,
Ne moy laissies pas defallir;
En vous ay mise ma fiạnce
Et en le vostre grant poissance."
Adont li fait li fel tirans

---

[56] The correction of "martir" to "martire" makes the line metrically good.

[57] The rime of "froncq" and "beneicon" shows that the final consonants of "froncq" are not pronounced.

[58] "Viergene," as usual, is disyllabic.

[59] Hypermetric. "De" should be omitted.

[60] "Martianus" in l. 294 has the value of four syllables. Here, apparently, it has the value of only three.

[61] "Le" should be the indirect object "li"; cf. l. 328. The line is hypermetric.

[62] Hypermetric. The adjective "tout" might be omitted.

[63] The manuscript reads "fait il."

Estroit loiier et pies et mains;
Les mamielles del cors sacier,
A une espee detrencier.
fol. 62^{a} Or escoutes petis et grant,
Del desloial, del mescreant.
Honnour ne honte ne doubta
Al hoïr quant il commanda
Que de la viergene fust trencie
Chou que sa mere avoit laitie.
La vierge a fait une orison
Par mout grande devotion:
"Grasce," fait elle, "et loenge,
Mes tres dous amis, a toy ren ge.
A toy moy offre et ay offiert
Et grant tourment pour toy souffiert,
De moy a toy (ay) fait sacrefisce,[64]
Et si l'ay fait il a grant piece.
A toy ferai une priiere
Car a tes siers ne ses escondire; [65]
Ciaus qui mon non recorderont
Et ma vigille juneront,
De par toy soient visite
En quelconques necessite.
A tous chiaus qui m'aront en memore,[66]
Tres dous Jhesus, boins Rois de glore,
Fais pardon de leur pecies,[67]
Et avoecq moy les essauchies."
Encore n'avoit faite s'orison [68]
Quant une vois du ciel respont:
"Ma bielle espouse, douce amie,
ne soiies de çou ensongnie.
Apparillie sui mout volentier[s] [69]
fol. 62^{b} De faire çou que tu requier[s].[70]
A tous chiaus feray grant aïe
Qui en memore aront ta vie;
Qui ta vigille junera
En tous peris aidies sera."
La sainte viergene estent le col
Et ses fel peres y fiert un cop.
Or a sa fille decollee
D'une espee bien aceree;
Ciertes ce fu cose mout ville
Quant li peres ocist sa fille.

---

[64] Hypermetric. Omit "ay."

[65] Hypermetric.

[66] Hypermetric but may be corrected by omitting "chiaus," or "tous."

[67] The first half-line lacks one syllable.

[68] The line has two syllables in excess. "Encore" might be changed to "encor" and the feminine "e" of the participle "faite" should be omitted.

[69] The line is hypermetric. "Mout" might be omitted. The final "s" has been added to "volentier" because of the rime with "requier[s]."

[70] The manuscript reads "requier." The second person singular present indicative suffix "-s" seems demanded.

Dioscorus descent del mont
Et voit un feu venant d'amont;
Del ciel descent trestout espris
376 Dont li tirans est consievis.
Decollee est la sainte damme
Ensamble sainte Julianne.[71]
Ychou fu fait, si com moy samble,
380 Pres des nonnante de Decembre.[72]
Uns hons de grant religion,
Valentinus avoit a non,[73]
Ices reliques glorieuses
384 De ces deus gemmes precieuses
Mout dignement enbausuma,
Ens un marbre les saiëla.
Par les merites de sainte Barbe,
388 La Dieu amie, digne marte,[74]
Mout de miracles y sont fais,
Et redrecies mout de contrais,
Et pluiseurs mors re[s]uscites,[75]

---

[71] In the Syriac legends of Saint Barbara, it is related that a God-fearing woman, Juliana by name, followed Barbara when she was brought forth from the prison where she had been healed of her terrible wounds by Our Lord. When this woman observed the miracle that had been wrought, how the marks of the wounds she had suffered had all disappeared, she decided that she too would be a martyr. When the Prefect condemned Barbara to further torture, Juliana lamented and complained bitterly. Hearing her, Martianus asked who she was. He was told by one of the by-standers that she was a Christian. In anger, the Prefect commanded that she be subjected to like tortures. She was imprisoned while Barbara was led naked about the city. After Barbara was brought back to the prison, Martianus ordered them both to be beheaded. And so it was done on the 4th of December, Barbara by her father, and Juliana by a soldier.

It is Weyh's opinion that the oldest form of the *Legend of Saint Barbara* did not contain the Juliana-episode. He offers as an explanation of its introduction into the Legend the possibility that in some local Calendars, a local saint Juliana might have had her feast-day on the 4th of December. Since Saint Barbara's feast-day fell on the same day, their names, so close to each other in time and in space, were brought into a spiritual relationship. Weyh points out as a parallel and possible model the figure of Polychronia in the *Legend of Saint George*. A like relationship, too, appears in the *Legend of Saint Agnes* between Agnes and Emerentiana. Once the Juliana-episode was attached to the Legend, it was considerably shortened in the Greek versions. In the Latin versions, appears merely the mention that she was beheaded at the same time as Saint Barbara. Cf. Wilhelm Weyh, *Die Syrische-Barbara-Legende* (Schweinfurt, 1911), pp. 13–14, 20–21.

[72] Barbara's feast-day falls on the 4th of December which in the Roman Calendar would be the day previous to the Nones of December. In the *Legenda Aurea*, it is stated that she was beheaded the fifth day of December. Cf. *Legenda Aurea*, ed. Th. Graesse (Leipzig, 1850), p. 901.

[73] Jacobus de Voragine has expanded the suggestion concerning Valentinus that he found in the *Legend of Saint Barbara*. There it is merely stated, as in the poem, that he gathered together the relics of the two martyrs. Jacobus, however, relates that after Barbara had been shut up in the tower, she began to think of divine things. Her reason told her that the gods of her parents were created things, had had an existence like her own. That existence they owed to an uncreated being. Therefore she despised the pagan gods and longed to know the true God. A rumor comes to Nicomedia that in Alexandria there lives the wisest of men, Origen by name. It dawns upon her that he is the very man who could teach her the truth, who could confound the pagan gods. She writes a letter to Origen telling him of her desires. The letter is delivered to Origen who is teaching Christianity in Alexandria. Origen replies in a letter telling her of the One God in three Divine Persons. He entrusts a priest, Valentinus, with the letter. In Nicomedia, Barbara's father is told that Valentinus is a skilled physician from Alexandria, a man who can cure souls. He is allowed to visit and converse with Barbara. He instructs her in the Faith and baptizes her. We hear nothing further of him.

[74] Assonance.

[75] The manuscript reads "reuscites."

fol. 62va
Et aveules renlumines.
De sainte Barbe vous diray
La verite, chou que j'en say.
A mainte vierge samb[l]ant e[s]t dite [76]
Qui el ciel ont grant merite, [77]
A sainte Agnies, a sainte Aguise,
Et a la sainte Kateline. [78]
Car de la sainte trenite
Mout bien demoustra le deïte [79]
Ensi com fist la Kateline
A cinquante de grant doctrine. [80]
A sainte [Aguise] est comparee [81]
Par une autre viertu provee
Car elle ot la mamelle traite,
Pour Dieu amour toute deffaite.

---

[76] The manuscript reads "sambant et dite." The correct phrase appears at l. 430.

[77] Lacks one syllable. One might read "mout grant merite."

[78] Assonance.

[79] Hypermetric. The omission of "mout," which is unnecessary, corrects the line.

[80] Barbara had taught the doctrine of the Trinity by the three windows that she demanded in the tower. Therefore is she likened to Saint Catherine of Alexandria, martyred in 307. Her feast falls on the 25th of November. She was the daughter of King Costus and was excellently educated. The Emperor Maxentius commands that every one in the province should repair to Alexandria there to sacrifice to the idols. Catherine, a virgin of eighteen years and a Christian, remains alone in the palace. She hears one day a great tumult, in which are mingled groaning and singing. She goes out of her palace and then sees many Christians who, because they are afraid to die, are being brought to the Temple to sacrifice to the pagan gods. Boldly she approaches the Emperor and tells him that she is going to attempt to convert him, and there before the Temple she begins to expound to him the mysteries of the Faith. Maxentius has her brought to her home and after the sacrifice he goes to her and demands to know who she is and what she teaches. She tells him and begins again to teach him the Faith. Realizing that he is powerless before her eloquence and her wisdom and knowledge, he summons all the grammarians and rhetoricians of the time to come to Alexandria. He promises them great rewards if they are successful in refuting the young girl. There are fifty of them. Catherine recommends herself to God and an angel appears who tells her that not only will she be victorious in her struggle with these wise men but that she will convert them. And so it happens. Catherine refutes each argument advanced by them until finally they do not know what to say. The Emperor is furious, and one of the wise men tells him that never have they been worsted by men, but now they recognize that they are not dealing with the human but with the divine for it is the Spirit of God who speaks in her. The Emperor commands that they be burnt to death. Before they die Catherine further instructs them. Then they are martyred. Catherine is later put to death. Cf. *Legenda Aurea*, ed. Th. Graesse (Leipzig, 1850), pp. 656–662.

[81] The manuscript reads "Agnies." It is an evident error since Agnes never suffered the indignity of having her breast cut off. Moreover, she is compared to Barbara in the lines following, l. 407 ff. Sainte Aguise is probably Saint Agatha. The name "Aguise" likely arises from the etymology of her name as given in the *Legenda Aurea*, "Agatha dicitur ab agios quod est sanctus," (p. 170). The feminine "Aguise" was likely formed from "agios–a." The identification becomes more probable from the reference to the sufferings she underwent.

Agatha, a virgin and a Christian, lived in the city of Catena in Sicily. She was of a noble family and very beautiful. The consul Quintianus desired her for his wife. The young girl refused him and remained unshakeable in her determination to preserve her virginity. Then the consul delivered her to the procuress Aphrodisia, and to her nine daughters, all prostitutes, in an effort to cause her to change her mind. Neither threats nor promises avail and Aphrodisia is forced to admit to Quintianus that she has failed. Agatha then is brought before the Consul, confesses her Christianity, and is given the alternative of sacrificing to the gods or of being tortured to death. She refuses to sacrifice and is placed in prison. The next day, the Consul has her tortured. One of the tortures she has to undergo is that of having her breasts twisted and pulled from her body. In prison that night, an Apostle appears to her who cures her wounds and restores the breasts to her body. Four days later, she again appears before the Consul. An earthquake halts the tortures that are being inflicted on her. Quintianus in fear returns Agatha to prison. There she dies. She was martyred in the reign of Decius, in the year 253. Her feast-day is celebrated on the 5th of February. Cf. *Acta Sanctorum*, Februarii Tomus primus (Paris, 1863), pp. 599–635, and the *Legenda Aurea*, pp. 170–173.

A sainte Agnies par tel raison
Dont je ferai solution.
Quant ses peres le deviesti,[82]
Nostre Sire le reviesti
D'une viesture toute blance
Qui li tramist par un sien angele.[83]
Puis [est] menee au bourdiau [84]
Avoecq un jovene damoisiau
. . . . [85]
Ensi remest tous ses reviaus.
Mais Jhesus li rendi la vie
Pour l'orison de sen amie.
Puis envoya une viesture,
Li Rois du ciel, et blance et pure
A sainte Agnies la soie amie;
Par un angele l'a reviestie.
Ensi vous di de sainte Barbe,
fol. 62^{vb} Loncq tamps a estet de moy garde.[86]
Car ses peres la decolla.
Ciertes forment le compara
Car li esfondres le consievist
Par le commant de Jhesucrist.
Et puis a saint Marguerite
Sainte Barbe samblant est ditte.[87]

---

[82] The poet is slightly in error in his analysis of the legend of Saint Agnes.

Saint Agnes was martyred in Rome probably in the year 305. Her feast is celebrated on the 21st of January. According to her legend, she was of noble family, a virgin of 13 years of age. The son of the Prefect of the city falls in love with her. She rejects his pleas that she marry him. His father learns of his desires and demands that she marry his son. She refuses. He is told that she is a Christian. He has her brought to judgment. She is given the choice of becoming a Vestal virgin or of becoming a prostitute after her refusal to sacrifice to the gods. She is disrobed before being brought to the brothel but immediately her hair grows to such miraculous length as to cover her completely. On her entrance into the house of shame, at her prayer, a white garment appears which she puts on. A white light surrounds her so that the youths who come to her do not dare approach. The Prefect's son finally comes. More bold than the rest, he attempts to touch her. He is struck dead. At the Prefect's prayer, she prays to God and the youth is raised to life. The Prefect, then, unwilling to condemn her to death but in fear of the pagan priests, allows his Vicar Aspasius to sit in judgment on her. She miraculously escapes martyrdom by fire. Finally, she is put to death by a sword thrust through her throat. Cf. *Acta Sanctorum*, Januarii Tomus secundus (Paris, 1862), pp. 715–717, and *Legenda Aurea*, pp. 113–117.

The poet, then, errs in representing Agnes's father as disrobing her. That, the Prefect has done. Moreover, when she is disrobed, it is not a robe sent by Our Lord that covers her nakedness, but her own hair grown to miraculous lengths. It is only after she has entered the brothel that the dress appears.

[83] Assonance.

[84] The manuscript reads "puis menee au bourdiau." The meaning seems to demand the auxiliary "est" to form the present passive tense. Its inclusion remedies a line that would otherwise lack one syllable.

[85] There is a line missing at this point. Lines 413 and 414 go together both as regards meaning according to the legend and through rime. The missing line records very likely the attempt made by the son of the Prefect to molest Agnes, and the fact that he is struck dead.

[86] Assonance.

[87] The manuscript reads "a sainte Barbe." Saint Margaret, virgin and martyr, was the daughter of Theodosius, patriarch of the pagans at Antioch. She was brought up a Christian by her nurse and baptized by her. One day when she was fifteen years of age, while she was watching sheep with other maidens, the Prefect Olybrius passed by and fell in love with her. He had her brought before him and questioned her. He is told that she is a Christian and has her put in prison. The next day she is brought before him. He commands her to sacrifice and to adore the gods. She refuses and expresses her determination to die for Christ. She is tortured horribly until even the Prefect can no longer stand the sight of it. She returns to prison and there she prays to God that He deign to show her the enemy against whom she struggles. A hideous dragon appears. She makes the sign of

Qui sainte Barbe prie de cour
Nostre Sire li fait souscour(s).[88]
Et les femmès qui vont d'enfant
Si font lire cest rommant.[89]
Qui volentiers escoute la vie [90]
Nostre Sire leur fait aÿe.

Or escoutes le grant miracle.
Pour Dieu amour et sainte Barbe [91]
Je vous dirai d'un chevalier
Qui tousjoursmais fyst a prisier.
De sainte Barbe oït parler,
Mout le commence a amer,
Et en memore toudis l'avoit;
Sa vegille cascun an junoit.[92]
Et li pria (que) vraie rep[en]ta[n]ce,[93]
Et li donnast vraie congnissance [94]
Car il estoit d'une grant guere,
Et ne savoit en quelle terre
Finer li couvenoit sa vie;
Pour çou prioit la Dieu amie.
Quant vint apres un peu de tamps
De ses trieuwes fu fors li tamps;
Trieuwe n'avoit ne jour ne pais.[95]
fol. 63^{a} Et si cevaucoit tout en pais
Loncq ses bles et ses coutures [96]
Pour veöir s'il estoient mures.
Estre le voie[nt] ses anemis,[97]
Le chevalier ont entrepris
Et puis apres copet la tieste
Mout liement et a grant fieste.
E vous le cief tout decollet;

---

the cross and it disappears. The devil appears then to her in the form of a youth. She conquers him and forces him to disclose his evil plans and deeds. The next day she is again tortured. She remains unharmed in the midst of them. Finally the Prefect orders her to be decapitated. She obtains his permission to make a short prayer. She prays for her persecutors, and for those who afterwards will invoke her name. She prays particularly for women in childbirth. She demands that as often as they shall call upon her name, the child may be born without trouble. A voice tells her that her prayers are heard. She is then decapitated. Her feast is celebrated the 20th of July. Cf. *Acta Sanctorum*, Julii tomus quintus (Paris, 1868), pp. 34–39, and *Legenda Aurea*, pp. 400–403. It is worthy of note that only in the *Legenda Aurea* version the prayer for women in childbirth appears. In the version contained in the *Acta Sanctorum*, Saint Margaret commends herself into God's hands.

[88] The manuscript reading "souscours" destroys the rime and the final "s" is unnecessary.

[89] The line lacks one syllable. Perhaps "se font."

[90] Hypermetric.

[91] Assonance.

[92] Hypermetric.

[93] The manuscript reads "et li pria que vraie reputace" which does not seem to make sense. There is a parallel to these two lines in ll. 483 and 484. The meaning that the poet seems to make is this: "He begged of her repentance, and that she should give him true knowledge." Therefore, the line might be reconstructed: "Et li pria vraie repentance.

[94] The line is hypermetric. "Et" might be omitted.

[95] "Trieuwes," modern "trêve" is derived from the Old High German "triuwa," modern "Treue," cognate with the English "true." In l. 452, it seems to have the meaning of "security." In l. 453 the meaning seems to be "rest," — "He had neither rest nor peace." Compare the modern expression, "n'avoir ni paix ne trêve" — "to have not a moment's peace."

[96] The line lacks a syllable.

[97] The manuscript reads "voie." The plural seems demanded as is seen in the following line.

Le capellain at appellet:
"Vien ça," fait il, "fay moy souscour,
Tu qui portes mon Creatour.
Reporte moy droit a mon cors
Et si me donne de Dieu le cors."

Or escoutes de cel boin priestre.
Tantost remist au col la tieste,[98]
Puis li demande li capelains
Qui n'estoit fols ne vilains:
"Tel miracle que senefie?
Dittes le moy, je vous en prie.
Or moy dittes par carite
De tel cose la verite."
Et respondi li chevaliers:
"Sire," fait il, "mout volentiers.
Une viergene a en paradis
A cui je sui loyaus amis,
Car tousjours l'ay forment amee
Sa vegille cascun an junee.[99]
Çou est ma damme sainte Barbe,
Loncq tamps a este de moy garde.[100]
fol. 63^{b} Je li priay vraie repentance[101]
Et en le fin vraie congnissance,[102]
Car elle fist une priiere
Au Roi du ciel qui mout l'ot ciere;
Par fine amour et par fianche
Li demanda sa connissance
Qui tout tantost li ottria
Quant ses peres le decolla.
Sauves seront par son merite,
La verite vous en ai ditte."
Puis a faitte sa confession[103]
Par mout grande devotion
Li capelains nostre Signour
Liement et de boin cour.[104]
L'ammë ist dou cors sans grevance;
Au plaisir Dieu fait penance.[105]
Messe pour l'ame est cantee
Et la guere a paisentee.
Pour çou vous di de celle dame,
Qui de coer li prie et clame,
En tous peris li fait aÿe
Jhesus le fils de sainte Marie.[106]
Or prions a la pucelle,[107]

---

[98] Assonance.

[99] Hypermetric.

[100] Assonance.

[101] Hypermetric.

[102] Hypermetric.

[103] Hypermetric. "Faitte" should be corrected to "fait." Cf. l. 339.

[104] The line lacks one syllable.

[105] The line lacks one syllable. Perhaps the auxiliary "a" should be inserted with the participle "fait," or more probably "penance" should read "penitance."

[106] The line is hypermetric. The article "le" might be omitted.

[107] P. Meyer corrected "or" to "ore" to maintain the syllable count. Cf. "Notice du ms. 10295–304 de la Bibliothèque Royale de Belgique," *Romania* XXX (1901), p. 304.

Sainte Barbe, la Dieu ancelle,
Qu'elle prie au Creatour
Qu'il nous donne joie et honnour;
Tels oevres nous doinst maintenir
Que nous puissiemes parvenir
Lassus en paradis tout droit.
Dittes amen que Diex l'otroit.
Explicit le vie sainte Barbe.

III. THREE MINOR OLD FRENCH POEMS

In addition to the longer poem, there are three shorter poems in Old French which have Saint Barbara as their subject. These poems are found in Books of Hours or Prymers in use during the fifteenth century.

I

The first poem, the *Vie de sainte Barbe* is found in ms. *B. N. nouv. acq. lat.* 615, fols. 124–126, a Prymer in use at Autun and dated about the end of the fifteenth century.[108] The writing in many places is difficult to decipher, and at a few passages, the writing is so faded and water-marked, that some words have proved undecipherable. The use of brackets at these passages indicates probable readings or restorations.

The poem is written in decasyllabic verse arranged in stanzas six lines in length. The rime is aabccb. With very few exceptions, the line is divided into two staves of four and six syllables.[109] The cesura is generally sharply defined.[110] The first stave usually has a masculine ending, although there is a fair number of lines in which the fourth syllable is feminine.[111] On the other hand, a feminine ending may follow the masculine fourth syllable.[112] Approximately one-half the poem is written in rich rime; of the remaining half, one third is in leonine rime.

The few dialectal traits that appear in the poem are characteristic of the East-central or Southeastern regions of France. That is not unexpected since the manuscript originates from Autun, in the Department of Saône-et-Loire.

1. Tonic "ǫ" < "au" and "ọ" checked closed through "ọ" to "u" with the spelling "ou." "Ouse" l. 18 (ausat) but riming with "close" l. 15; estoule l. 73; coustes l. 79.
2. "A" seems to have palatalized to "ę" before "š," "ž," with the spelling "ai." "Couraige" ll. 9, 111; "saige" l. 12; "ouvraige" l. 21; "paraige" l. 24; "caichie" l. 39; "ataichie" l. 49; "araichier" l. 68; "menaiche" l. 86.
3. Before "ṇ," a palatal glide was developed after "a" and the diphthong "ãi" rimed with "ẽi" as is seen in the rime "desdeigne: montaigne" l. 36.[113]
4. "Ai" has apparently levelled to "ẹ" in the rime "pere: paire" l. 48.[114]
5. The rime "brandons: entendons (intendentes) l. 80 is characteristic of Lorraine.[115]

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[108] Cf. H. Omond, *Nouvelles acquisitions du Département des Manuscrits pendant les années 1891–1899* (Paris, 1900), and V. Leroquais, *Les livres d'heures manuscrits de la Bibliothèque Nationale* (Paris, 1927), pp. 266–268.

[109] The exceptions are ll. 31, 99.

[110] Cf., however, the type of ll. 4, 10, 17, 34, etc.

[111] Cf. ll. 3, 11, 12, 25, 28, etc.

[112] Cf. ll. 4, 18, 26, 45, etc.

[113] Cf. H. Chatelain, *Recherches sur le vers français au XVe siècle* (Paris, 1908), p. 29, and M. K. Pope, *From Latin to Modern French* (Manchester, 1934), p. 499.

[114] Cf. Pope, *op. cit.*, p. 498.

[115] Cf. Chatelain, *op. cit.*, p. 31.

fol. 124 *S'ensuit la vie de saincte Barbe.*
Vierge excellant de haulte dignite
Qui cont [emplas] au ciel la trinite,
Saincte Barbe, espouse Jhesucrist,
Vraye martire de Dieu des ta jeusnesse,
Car mesprisas le monde et sa liësse
Pour serv [ir] Dieu. De ta legende escript.

J'ay diz tu fuz tant vertueuse et belle
Qu'en ton couvant n'en estoit point de telle.
Tu amoys Dieu de tres ardant couraige,
Le tout perfait trois secretement.[116]
Quant ton pere fit la tour, humblement
Trois fenestres feiz faire comme saige.

fol. 124^{v} En demonstrant la trinite divine,
C'est ung vray Dieu qui la terre enlumine.
Lors quant plus hault tu fuz en la tour close,
Par t'oroison, Dieu tantost de sa grace
Fit habunder eaue en certaine place,
Sanctifiee par luy- bien dire l'ouse.

La descendis, tres doulce jovencelle,
Au baptizer, — n'y avoit que toy et ly,[117]
Doulz saint Esperit, qui faisoit cest ouvraige.
Adonc tu fus de grace environnee
Et desormais du tout a Dieu donnee;
Par quoy tu es vierge de hault paraige.

Quant ton pere te voulsist marier,
Toy qui aloye tout droit sans devyer [118]
N'entendis point de mortel mary prandre
Ains Dieu. "Pere, autre n'auray espoux
Que Jhesucrist, c'est le Seigneur de tous,
Mon doulz saulveur auquel n'a que reprandre."

Si tost que ton pere t'oÿt nommer
Le nom Jhesus commença a fumer;
Moult fut trouble car les Chrestiens desdeigne.
Comme cruel forcenne de despit,
Te voult tuer de s'espee sans respit,[119]
Mais tu fouys lors en une montaigne.

Et lui apres querant sa fille occire,
Ung des bergier[s] maulvaix lui monstra. "Sire,[120]

---

[116] The line lacks one syllable in the second stave.

[117] Neither assonance nor rime occurs. The line has one syllable in excess unless one should read "n'avoit" instead of "n'y avoit." Cf. 1.30.

[118] The second person singular, present indicative occurs without the verbal suffix "s." This is the usual procedure of the poet after "e" mute. Cf. M. K. Pope, *op. cit.*, p. 224, and ll. 52, 58, 94, etc., of the poem.

[119] "Espee" is either disyllabic or the line has one syllable in excess.

[120] The manuscript reads "bergier."

Veës la pres caichie[e] soubz ung arbre."[121]
Lors t'a prinse, batue sans targier.
En regardant tu mauldiz le bergier
Qui fut trouve tout en pierre de mabre.[122]

Aussi son part de brebis fut mauldit
Qui fut mue saulterraulx comme l'on dit.[123]
Puis fus traÿe et baillie a ton pere,
A ung provost payen plein de fureur,
Juge parvers, de tous maulx procureur,
Qui de verges feit faire grosses paire.[124]

fol. 125 Adonc te fit ataichie[e] toute nue,[125]
Et tant batre que a peine on t'eust congneue
Si fort fus lors sanglant et murtrie.[126]
Ce non obstant, tu presches et afferme [127]
La loy de Dieu comme constant et ferme,
En delaissant leur faulce ydolatrie.

Mais pour faire les pagens plus confuz,
Des aussitost que desliee tu fuz
Dieu te garist, car seine on te trouva
Tout ainsi que s[i] battue ne fusse oncques.[128]
Le faulx prevost eust tel despit adoncques
De felonnerie, que a pau qu'i ne creva.

Honteusement par les pieds te fit pandre,
A gros maillez de fer ton beaul chief tendre.[129]
Tant batre te fit par tirans inhumains [130]
De playes fus couverte derechief.[131]
Sanc coulant bas des parties de ton chief [132]
. . . .[133]

Les mammelles apres de ta poitrine
Fit araichier et tirer hors racine.
Et puis te fit pour plus avoir diffame
Nue mener par toute la province.
Mais Dieu des cieulx qui est souverain prince,
Lors te garda ton bon honneur et fame.

---

[121] The manuscript reads "caichie." The feminine is needed.

[122] For the rime "arbre: mabre," cf. Chatelain, *op. cit.*, pp. 52–53.

[123] "Saulterraulx" is disyllabic. Cf. l. 21, 60, 81, where pretonic "e" is unpronounced and the future forms, "obliray" and "pardonnray" of ll. 104, 106.

[124] According to the poet's usage, final "s" the plural suffix is omitted after mute "e." In this case for the sake of rime.

[125] The manuscript reads "ataichie." The feminine is needed. Perhaps one might read "ataichiee tout nue" to avoid the hypermetric line resulting from the correction.

[126] The manuscript reads "murtriee." The line lacks one syllable.

[127] As usual, the final "s" of afferme is omitted for rime, but is retained in "presches" to avoid elision.

[128] The manuscript reads "sa." Note the elision of the final "s" of "fusses" to allow elision.

[129] The manuscript reads "chiefz."

[130] The first half-line has one syllable in excess.

[131] The manuscript reads "playees."

[132] The second half-line has one syllable in excess.

[133] The final line of the stanza is omitted in the manuscript.

Car ung ange blanc estoule apporta
Pour toy couvrir, et bien te conforta.
Garie fus de tes playes toute sainne.[134]
Le provost fut de despit tout changie
Puisqu'il ne peust estre de toy vangie.
78 Mettre te fit en prison tres villainne.

A tes coustes fit mettre grans brandons
De feug ardant que fit les entendons.[135]
Et cruellment encor plus te fit batre
De plombees pour toy faire nyer
La chrestiennete et ton Dieu regner.[136]
84 Mais on ne peust ton bon vouloir esbatre.

Ton pere eust veu que tout ce peu te monte,
Du menaiche ou prier[e] ne faiz compte.[137]
Adonc requist au provost ta personne
Disant "je vueilz ma fille a raison mettre."
Le provost dit: "et je vous en fais maistre."
90 Lors te monstra sa voulente felonne.

En hault d'une montaigne t'a menee
Pour accomplir sa faulce de[s]inee.[138]
Et dit "faulce chrestienne, il est saison
Que renie ce Jhesus ou que tu meure." [139]
A genoulx lors tu te mis sans demeure
96 Et feis a Dieu ta darraine oroison.

fol. 125v "Jhesus, mon vray createur, je vous prie
Pour mes servans, ne les obliez mie.
Pour Dieu, qu'ilz soient de grace receuz;
Et qui vouldra en vous sainctement croire [140]
Et de mes maulx aura souvent memoire,
102 Que nullement [par nous soient] deceuz." [141]

La voix du ciel respond: "ma doulce amie,
Je te proumettz que je n'obliray mye;
Les bons chrestiens qu'ilz te servent toudiz.
Je pardonnray a ceulx pour qui tu prie
Et les retiens desja de ma partie
108 Car a la fin, ilz auront paradiz."

Des que la voix tous ses motz eust finiz,
Le faulx pere, ydolatre obstine,[142]

---

[134] The manuscript reads "gariee." The line has one syllable in excess. One might emend the line by reading "tout sainne."

[135] One would expect the plural verb "firent" to agree with the subject "les entendons." "Firent," however, would make the line hypermetric.

[136] "Chrestiennete" has the value of only three syllables. Cf. l. 44.

[137] The manuscript reads "prier." The noun is needed for the syllable count and as the correlative of "menaiche."

[138] The manuscript reads "detinee."

[139] The line has one syllable in excess. The "ce" might be omitted. Note again the omission of the "s" in the verbs "renie" and "meure."

[140] The manuscript reads "quil."

[141] The manuscript reads "desceuzes." Between "nullement" and "deceuz" the manuscript is undecipherable.

[142] Assonance only.

Comme coraige depiteulx et plain d'ire
Son glaive prend. Toy, vierge recolee,
Son propre enffant, luy mesmes a descolee,
Et mis a mort pour finir ton matire.

Mais pugny en fut. Dieu le vouloit![143]
Quant le mauldit multrier s'en devaloit,
En retournant, ainsi que dist l'istoire,
Du ciel descendi ung cruel feug de fouldre[144]
Qui le [tua] tout vif sans laissier pouldre;
Et toy, dame, tu fus regne en gloire.

Or te prions par ton benoit martire
Que en toy servant vers Dieu noz cuers atire.
Tout qui te sert, tu luy rends bon guerrdon.
Impetre nous grace de repentir
Et non jamais a peschier asentir,
Et que par toy, Dieu nous face perdon.
Amen.

On the following page of the manuscript, that is, on folio 126, appears a prayer to Saint Barbara written in octosyllabic couplets.

Aultre oroison de saincte Barbe.

Saincte Barbe, vierge honnoree,
Qui fustes jeusne enlumynee
Du saint Esperit et de sa grace
Tant que mundanne vye laissates,
Et vous mettes a Dieu servir
Pour vraye gloire acquerir,
Grief, peine et martire souffrites
Dont vous avez dons et merites.
Car quiconques vous requerra
Et devotement vous priera
Pardon aura de ses peschiez,
Malaides seront alictez
Et preservez d'un pedimye
Que souvant le monde guerre.
Des tristes peinez reserrir
Et de fouldre du ciel garantir
Tous ceulx qui vous en requerront
Et en ayde appelleront.
Donc ce vous prie entierement
Que me recevez doulcement
En vostre glorieux service,
Et me delivrez de tous vices,
De malaidie et de tristesse,
De fouldre du ciel et de tempeste,
Et priez pour moy Jhesucrist
Que j'aye a la fin paradis. Amen.

---

[143] The line lacks one syllable. [144] The first half-line has one syllable in excess.

II.

The second poem is found in ms. B. N. *fr.* 24865, fols. 61ᵛ–63ᵛ, a Prymer used in the fifteenth century.[145] It is written in quatrains of decasyllabic lines riming abab.[146] The Old French poem is followed by a Latin Hymn, an Anthem, Versicle and Response, and the Prayer.[147]

fol. 61ᵛ

Cy s'ensuit ung devot dittier compose en l'onneur
de madame saincte Barbe.

Je te salue, espouse de Jhesucrist,
Saincte Barbe, qui souffris grief torment
Pour ton espoux qui humanite prist
Et receut mort pour nostre sauvement.

Bonne, belle, plaisant, poissant et sage,
Pour ton espoux contempnant tout le monde,
Tu posside maintenant l'eritage
Ou tout plaisir et parfait bien habunde.

Le coeur felon ne l'orgueil [ne l']outrage [148]
De ton pere, ne sa grant cruaute
Ne tocast point l'amour de ton espoux [149]
Ne de ton coeur conflant la leäute.

Del pau piteux pasteur qui t'ensigna
Dieu, qui t'amoit, prestement toy vengiat;
Par sa puissance en mabre le mua,
Ses brebis fist sauterelles des chans.[150]

En la chartre tenebreuse et oscure
Ton bon Seigneur, Jesus, te visita,
Et t'envoia des chieulx blanche vesture
Dont ton saint corps nu couvrit et para.

Apres pluseurs crueux tormens et paines
A mort te mist ton pere naturel.
Maintenant as les joies souveraines,
Et ton pere a le tourment eternel.

Vierge sainte, vierge victorieuse,
Ton doulx Seigneur et espoux t'otroia
Celle oroison que fis si piteuse [151]
Pour ung chetif qui t'aime et servira.

---

[145] Cf. H. Omont, *Catalogue des manuscrits de la Bibliothèque Nationale, Anciens petits fonds français*, II, pp. 460–461.

[146] Cf. G. Naetebus, *Die nicht-lyrischen Strophenformen des Altfranzösichen* (Leipzig, 1891), LXXI, p. 160.

[147] The Latin poem is edited by Clemens Blume S. J. in *Analecta Hymnica Medii Aevi*, LV (Leipzig: 1922), no. 79, p. 96.

[148] In the manuscript the conjunction and article are omitted.

[149] Neither rime nor assonance appears.

[150] Assonance only.

[151] The verse lacks one syllable. Perhaps the subject "tu" might be added.

Je te requiers, donques, glorieuse dame,
Par toy de Dieu en grant besoing avoir
Confession et salut de mon ame,
Et que a merchi me veuille recepvoir.

III.

The third poem is found in ms. B. N. *lat.* 1321, fols. 90–91^v. It is a Prymer in use in Paris and belongs to the second half of the fifteenth century, or more probably, according to Leroquais, to the end of that century.[152] The poem, a hymn of intercession, presents a somewhat complicated metrical form. The stanza is composed of twelve lines, eight of which vary in length from seven to eight syllables, and four that contain either three or four. They are arranged thus, supposing "x" to be the longer and "y" the shorter line: xyxxyxxyxxyx. The rime scheme is as follows: aabaabbbcbbc.[153] In the manuscript, the Old French poem is followed by a commemoration, versicle and response, and the prayer, and then by another commemoration, versicle and response and prayer in Latin.

Saincte Barbe, tres glorieuse,
    Victorieuse,
De tous faulx encombrement,
Douce vierge precieuse,
    Tres gracieuse,
Je vous prie tres humblement,
Donnez moi allegement,
    Seurement
Du mal que j'ay. Donc je dis las,
Car l'ennemy durement
    En tourment
Me tient prisonnier en ses las.

. . . .
    . . . .[154]
De mon corps maleureux,
Vous demande a grant instance
    Allegance,
Et des faiz inniquicteux
Que j'ay faiz, dont je suis honteux
    Et doubteux
Que en enffer dampne ne soye.
Comme dolant et angoisseux,
    Douloureux,
Honteusement j'en larmoye.

Faulx orgueil et avarice,
    Lait et nice,
Ou il n'y a que fellonie,
Ire, plain de grant malice,
    Fol et nice,

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[152] Cf. V. Leroquais, *Les livres d'heures manuscrits de la Bibliothèque Nationale* (Paris, 1927), I, pp. 173–174, and *Catalogus codicum manuscriptorum Bibliothecae Regiae*, III (Paris, 1744).

[153] The same metrical form appears in a "Prière à la Vierge" in ms. B. N. *lat. nouv. acq.* 392, fol. 166, of the sixteenth century. It is printed by Leroquais, *op. cit.*, II, pp. 325–328.

[154] The rime indicates that the first two lines of the stanza have been omitted in the manuscript.

Luxure et gloutonnie,
Paresse aussi, plain de folie,
Et envie
fol. 90ʳ Les quelz j'ay longuement servi,
Ont laidement m'ame honie
En ma vie
Par le faulx art de l'anemy.

Si vous prie devotement,
Finablement,
Que vous vueillez requerir
Jhesucrist pour mon sauvement,
Et tellement
Que me vueillez secourir
Que puisse vivre et morir
Et finir
En ce monde si bonnement
Que en la fin je puisse obtenir
Vous servir
En voye pardurablement.

Nicholas of Autrecourt

J. REGINALD O'DONNELL, C.S.B.

Manuscript

The present edition of the *Exigit Ordo Executionis* has been made from the only known manuscript of the treatise, namely that of the Bodleian Library at Oxford. The reference is: Ms. *Misc. Can.* 43. Cf. *Catalogus Codd.* Mss. *Bibl. Bodl.*, vol. III (1854), p. 462. Unfortunately the treatise is not complete in this manuscript. The work is written in good Gothic script quite free from cursive influences. It is written on parchment, grouped into sexternios and bound together with some legal, liturgical and philosophical texts; the binding is modern. The dimensions of the folios are 290 mm. x 200 mm.; there are two columns of 52 lines each. There has been little attempt at ornamentation. The initial *s* of the treatise is done in gold, black, red and green. In this letter is a miniature of what I take to be a grey friar.

Edition

(a) *Spelling*. I have used the spelling found in modern liturgical books; there seems to be no point in reproducing the mediaeval manner of spelling, which is neither familiar to us nor useful in a non-philological work. I have not noted such spellings as *arguando*, *advertandum*, *transsiat*, *eedam*, *etc.*, but have simply given the accepted usage. I might note, however, the occasional use of *c* for *s* as in *extrincecus* or *intencio* for *intensio*, not *intentio*.

(b) *Punctuation*. I have tried to avoid over-punctuation; the poor Latin style has caused considerable difficulty on this point. A system has been adopted which seemed intelligible and has been used consistently. I have made as many new paragraphs as I possibly could. With the exception of the prologues and the *Tractatus Primus*, *De Aeternitate Rerum*, the chapter headings have been introduced by myself and are not found in the text.

The following notice in a later hand is to be found on fol. 24^{v}.

5 De aeternitate rerum.
8 Utrum continuum componatur ex indivisibilibus.
10 An sit ponere vacuum.
12 An substantia et quantitas distinguantur.
13 An omne illud quod apparet sit.
20 Aliquae quaestiones de intellectu.
21 An unus effectus a diversis causis possit procedere.
22 An actus cognoscendi producitur actu ab anima et objecto
et multae quaestiones de Deo et intelligentiis et voluntate.

The numbers refer to the folios.

(c) *Corrections*. I have attempted to present the reader with an intelligible text, consequently it has been found necessary to emend many readings. In making the corrections the common sources of errors in manuscripts have provided some clues as has also the general sense of the text. In each correction I have asked: What did the author intend? What did the scribe see to cause such an error? For some corrupt passages I have been unable to suggest an improved reading and have consequently copied the text as found. With the exception of evident corruptions (where no possible doubt could exist as to the intention of the author) and needless repetition of words and phrases, all corrections have been noted. Pointed brackets have been used to indicate a word or phrase added by the editor, square ones to indicate words or phrases which do not seem to belong to the text.

(d) *References.* The references to Aristotle are given to the Bekker edition, to Averroes to the edition of Juntas, Venice 1550–52. Other references are given in full in the footnotes. In the majority of cases it has been possible to find the exact passage alluded to by Nicholas. However, when the exact passage could not be located, if another seemed to be able to be interpreted in accordance with what the author seemed to intend, I have noted this reference. No attempt has been made to search out all the sources of the doctrine of Nicholas of Autrecourt, which will be the subject of an article for a subsequent number of this review. I have not had at my disposal editions of the works necessary for such a task.

Added as an appendix is the *Quaestio de Qua Respondit Magister Nicholaus de Ultricuria* contained in Ms. *Lat.* 6559 of the Bibliothèque Nationale at Paris, ff. 191^r–193^v. The dimensions of this manuscript are 290 mm. x 200 mm. The script is Gothic with a tendency to be very cursive. Bound together with this text are several works on physics. The binding bears the arms of Louis XV. The gatherings are sexternios with *voces reclamantes.* This manuscript is designated by the letter A. Another manuscript of the Bibliothèque Nationale Ms. *Lat.* 14576, ff. 212^r–213^v, designated by the letter B, gives a text of the same question; as it varies considerably from Ms. A, it has been necessary to give a large portion of it in the footnotes. The dimensions of this manuscript are 300 mm. x 215 mm. The script is Gothic with a tendency to cursive traits. Bound together with this question are the *Sentences* of Holcot and Cliqueton and the *De proportionibus motuum* of Bradwardine. The gatherings are sexternios. The *Sentences* of Holcot were copied in 1389. The manuscript was procured for St. Victor's at Paris by Jean LaMasse, who was abbot of that convent from 1448 to 1458.

A bibliography relating to the life and works of Nicholas of Autrecourt can be found in: Ueberweg, *Geschichte der Philosophie*, vol. II (1928), pp. 591 and 783. Joseph Lappe has written an article on the life of Nicholas of Autrecourt which is to be found in the *Beitraege zur Geschichte der Philosophie des Mittelalters* (1906), vol. 6, *heft* 2. M. Vignaux has analyzed briefly the *Exigit Ordo* in the *Dictionnaire de Théologie Catholique*, XI, 561 ff. There is a brief note also by Prof. J. Koch in the *Lexikon fuer Theologie und Kirche*, VII, 573.

I wish to thank all those who have helped me with this edition. I owe an especial debt of gratitude to Dr. Aleksander Birkenmajer, who first directed me to undertake the work and even provided me with the photostats which he had had taken, and who gave me many hours of patient help. I wish also to express my many thanks to Prof. Joseph Koch who had the patience to read the text through with me and to give me much valuable help.

INCIPIT TRACTATUS UNIVERSALIS MAGISTRI NICHOLAI DE ULTRICURIA AD VIDENDUM AN SERMONES PERIPATETICORUM FUERINT DEMONSTRATIVI

Prima Pars Primi Prologi

SATIS exigit ordo executionis rectus, ne legitimatio causalis tanti propositi lateat, praemittere quid est illud ex quo assumpsi motivum condendi praesentem tractatum. Et dico quod multa quae venerunt apud animam meam, quorum complexione facta, hoc est bonum simpliciter, judicavi et quod ulterior dilatio displicibilis erat Deo.[1]

Primo inspexi doctrinam Aristotelis et ejus commentatoris Averrois et vidi quod mille conclusiones, vel quasi, in occultis et specialiter in illis quorum cognitionem maxime desiderat intellectus erant ab eis demonstratae. Verum est quod non inveni rationes demonstrativas ad oppositum in omnibus, sed occurrerunt rationes aliquae per quas mihi visum fuit quod ita probabiliter possent teneri conclusiones oppositae sicut propositae ab eis.[2]

Vidi secundo quod in eorum doctrina studebant aliqui per viginti vel triginta annos, immo aliqui ad aetatem decrepitam. Apparuit tertio quod notitia, quae potest haberi de rebus secundum apparentia naturalia et in tanto gradu quanto isti videntur habuisse, posset haberi in brevi tempore. Consideravi quarto qualiter omnes propter logicos sermones Aristotelis et Averrois deserebant res morales et curam boni communis; immo inter cetera de quo maxime dolendum, si verum sit, vidi, licet visione non plena, quod aliqui reverendi patres quorum capita jam albescunt canitie, ad quorum pedes in pulvere propter compositionem animi eorum in moribus rectam vix dicere ausus fuissem deliberato judicio dignum me sedere, sic proh dolor illum habitum qui secundum mores dicitur visi sunt sprevisse quod, cum insurrexit amicus veritatis et suam fecit sonare tubam ut dormientes a somno excitaret, emiserunt suspiria, omnino fecerunt signa tristitiae, et resumpto spiritu quasi armati ad capitale proelium in eum irruerunt.[3] Et quid pro Deo de istis? Et certe nedum caritas non videtur [non] fervere in eis, sed aemulationibus, invidiis, susurrationibus, amplexibus vanae laudis et omnibus miseriis quibus involvuntur homines sic apparent subjecti, quod in nullo nisi in pejus vita eorum a vita vulgi differens esse videtur. Sic dixisse in generali illis non nocet contra quos loquor; abscindatur gladio lingua mea si in speciali detraxerim eis vel si in hoc sit intentio mea pro futuro.

Redeundo unde sermo primus cum sic vidi quod de rebus per apparentia naturalia quasi nulla certitudo potest metiri et quod brevi tempore illud, quod potest haberi, habebitur si homines sic immediate intellectum suum convertant ad res sicut fecerunt ad intellectum hominum Aristotelis et commentatoris Averrois.[4] Cum etiam apparuit quod homines modicum debent adhaerere apparentibus naturalibus, apud me hoc venit judicium quod, si hoc cognoscerent bene nati communitatis politicae, converterent se ad res moris et adhaererent firmiter legi sacrae, legi christianae quae inter omnes honestissimum modum vivendi complexa est, viverent in caritate et perfectus dirigeret imperfectiorem in opere; non haberent materiam elationis considerantes quod sic ex puris naturalibus parvam certitudinem possunt habere de rebus; mundarent corda sua et recederent excaecantia intellectum invidia, avaritia, cupiditas; viverent sobrie, viverent caste. Tandem in processu temporis apparerent divini quidam homines qui non totum tempus vitae suae consumerent in logicis sermonibus vel in distinguendo propositiones obscuras Aristotelis vel in quotando commenta Averrois, sed intellectum divinae legis manifestarent populo et radiis suae bonitatis undique diffusis sic viverent quod in conspectu gloriosissimi principis totius naturae apparerent sicut specula sine macula et imagines bonitatis illius. Iste est finis, ista est intentio mea. Forsan cautius fuisset non expressisse,[a] sed tam divinum mihi apparet quod finaliter per me vel per alium debitum sortietur effectum. Supplico humiliter reverendis patribus sub quorum alis protegimur qui sunt exemplar totius sanctitatis ut sinant hoc opus peragi; nam vere non video quin deberet cedere animam vitae illius qui huic rei impedimentum praestaret; et si quo opus sit ejus mansivitas declarabit. Protestor quod nec in isto tractatu nec in aliis aliquid volo dicere quod sit contra articulos fidei vel contra determinationem ecclesiae vel contra articulos quorum oppositi condemnati sunt Parisius etc.; sed solum volo inquirere, circumscripta omni lege positiva, qualis certitudo possit haberi de rebus et an processus Aristotelis fuerint demonstrativi.

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[1] Cf. J. Lappe, "Nikolaus von Autrecourt," *Beitraege zur Geschichte der Philosophie des Mittelalters*, VI, 2 (Muenster 1906), p. 36*. Chartularium Parisiensis II, nº. 1124; Paris, Bibliothèque Nationale, Ms. *Latin* 16621, fol. 139^{v}–140^{v}.

[2] Cf. *ibid.*

[3] Cf. *ibid.*

[4] Cf. *ibid.*

Secunda Pars Primi Prologi

Incipio secundum sermonem meum ab uno de quo sillogizant homines contra illos qui nituntur transmutare famosa et elucidare de novo conclusiones occultas contingentes in rebus. Et eorum sermo unus virtualiter in duo dividitur; unum quod concernit judicium talis hominis in ordine ad conclusiones positas super rebus; secundum quod concernit judicium suum respectu existimationis quam habet de sua potentia. Conjungo sermones in unum et arguo sic: illae conclusiones non sunt verae et ita non est recti judicii; item ultra quam natura rei se habeat, dicens videtur existimare de se ipso quae sunt contradictoriae conclusionibus approbatis in communitate longo tempore ab hominibus qualiscumque intellectus fuerint; sed conclusiones quas posuisti ut probabiles in tuo principio et quas es recitaturus in isto tractatu sunt hujusmodi, nam sunt contradictoriae Aristoteli et commentatori Averroi; quare etc.

Ut videantur distinctius responsiones quae possunt dari huic argumento primo exonero [b] me quantum ad illud quod videtur concludere malam dispositionem animi ad mores in ordine ethico [c] gratia boni. Et ut veritas videatur ponam unam regulam, regulam moralem quae mihi videtur esse notabilis et utilis multum et est ista: omnis homo ad quem / veniunt, et praecipue 1^{v}
quasi naturaliter et ex se non receptive ab alio, omnes conceptus super aliquibus quaesitis qui veniunt ad aliquam totam multitudinem super illis et ultra quos quasi ex se non receptive ab alio veniunt conceptus ita, alii clari sicut isti et clariores, per quos ipsas res magis videtur attingere et sibi magis intimare, intellectus omnis talis potest ponere sine hoc quod sit caymotes [d] vel praesumptuosus aliquas conclusiones in illis quaesitis praeter illas quae sunt positae a tota communitate, immo directe oppositas eis et cum certitudine satis sufficienti suo judicio. Ratio regulae est ista, quia quemcumque natura ingeniavit in natura excellenti circa principia, ingeniavit in natura excellenti circa conclusiones. Nunc ex complexione illorum aliorum conceptuum

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[a] Ms. expresse.
[b] Ms. ex honore.
[c] Ms. ethic.
[d] *Perhaps for* Καυματωδες.

alia principia resultant et per consequens aliae conclusiones; nam non recte alicui principia communicarentur et denegarentur conclusiones. Cum igitur aliquis percipit et experitur quod super aliquibus quaesitis occurrunt sibi multi conceptus, et cum hoc scit ut certitudo potest in talibus contingere, quod omnes illos conceptus quos alii formant ipse format et multos alios per quos magis quasi subintrando attingit res, tunc videt quod est quasi tota illa multitudo in virtute quantum ad quaesita circa quae format tot conceptus ut tota multitudo; et ultra quantum ad alios conceptus est quasi alius homo in gradu excellenti, tunc cognoscit quod talis est apud quem notitia conclusionum ultra alios nata est pervenire.

Et per hoc respondetur ad quoddam argumentum quod multum movet juvenes quando incipiunt videre tendentiam diversitatum hominum et appetituum ipsorum et quod tota multitudo hominum, quicquid dicant ore, facto deserunt curam virtutum intellectualium et incessanter dant se quaesitui divitiarum et honorum et ut benefaciunt amicis qui dicuntur carnales. Cum ista considerant et vident quod illi de opposita conclusione sunt valde pauci, tunc accidit quasi quoddam bellum in eis et arguit intellectus eorum quod illud quod facto approbat communitas est faciendum arguendo sic: illi sunt imitandi qui sunt rectioris judicii; nunc est verisimile quod tota communitas hominum sunt rectioris judicii quam duo vel tres illius communitatis. Isto quidem argumento non utitur, sed regula posita supra; nam videt quod omnes conceptus quos habet multitudo circa illud quaesitum habet et multo plura. Unde scit quod si ab eis peteretur cur tantum divitias appetant, propter honorari etc., ultra istos conceptus habet multos alios; novit quod divitiae non sunt instrumenta ad bene operandum; novit bonum quod est in speculatione Dei et in usu virtutum moralium, ex quibus potest conjecturare quod alii non sunt ita nati gaudere isto bono sicut ipse; nam meditationes divinae non ita continue perveniunt apud animam ipsorum; et sic de multis aliis ex quibus potest scire quod est egregius positus extra gregem vulgi. Et ista regula politica videtur usus fuisse Anaxagoras ut recitat Aristoteles in 10 *Eth.*[5] Cum opponebatur sibi de tota multitudine quae erat ad contrarium illius quod dicebat, dedit responsum quod non erat sibi admiratio in hoc quia illi erant sentientes quae extra hoc solum quasi vellet dicere: satis video conceptus aliorum, sed ultra eos habeo digniores qui rectificant me; hac regula me non exonero quoniam non dico me habere omnes conceptus aliorum super quaerendis infra et ultra alios. Igitur ad me exonerandum pono aliam regulam civilem quae est ista: omnis homo cui super aliquibus quaesitis occurrunt aliqua contraria toti communitati et tractatu habito cum aliquibus quos existimat recti[e] judicii, stetit longo tempore quod sibi apparuerunt et adhuc apparent, potest et debet praecipue in mere speculativis manifestare fideliter suum judicium et ponere ea ut vera, sed ut consideretur in eis; et ideo, cum talis non habeat falsam existimationem de suo judicio, non incidit in illud vitium de quo supra.[6] Nunc ego sum hujusmodi; et sicut dictum est in majore, sic sub ea potest minor vere sumi.

Et quia in superioribus concludebatur super obliquitate judicii, pono duo documenta ad cognoscendum an aliquis sit recti judicii: unus alio non est rectior judicio nisi quia conceptus proprii complexorum, secundum quod veritas nata est venire in apparentia apud animam, veniunt ad intellectum suum in claritate sua et in esse perfecto cujus signum videtur; nam in primis propositionibus ubi conceptus proprii terminorum secundum quos attenditur veritas complexionis veniunt apud animam, omnes circa ea recti sunt judicii; si vero[f] sit propositio latens, intellectus indigebit resolutionibus multis donec deveniat usque ad illos conceptus secundum quos attenditur veritas. Nunc secundum hoc regula videtur esse ista: quandoque aliquis in occultis est resolutivus quasi sua potentia non habitibus acquisitis,[g] ab aliis distinctivus et abstrahens unum conceptum ab[h] alio, ⟨*non*⟩ remanens in superficie, sed quasi penetrans ipsas res perceptivus causarum, ille est recti judicii; nam apparet quod talis potest pervenire usque ad conceptus proprios in quibus continetur veritas quaesiti. In hoc considerent bene nati ad judicandum a qualibus processerunt intellectibus doctrinae hominum.

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[e] Ms. m?

[5] Cf. 1179 a 12.

[6] Cf. p. 182.

Secundum documentum est: sunt quaedam regulae in moralibus quae universaliter ponuntur de quibus frequenter est occultum demonstratis casibus particularibus an ad eos debeat extendi regula universalis, et hic est opus epieikeiae[i] ut dicit Aristoteles[7] ad quem ut ad rectam mensuram recurritur, et si de aliquo posset sciri quod in isto bene se habet, signum esset quod esset recti judicii. Et hoc apparet resolvendo in causam; nam talis non posset regulariter se habere in determinando casum particularem nisi quia apud se exquirit omnes causas quae potuerunt movere legislatorem; et quando videt eas habere / locum in casu particulari dato, dicit quod regula ad illum casum 2r debet extendi; et quia sic ille est perceptivus causarum, proprii conceptus terminorum veniunt apud ipsum; ergo est bene judicativus.

Hoc dixerim quantum ad rationem suprapositam in quantum videbatur concludere me habere majorem existimationem de mea[j] potentia quam in rei veritate esset; plus videbatur concludere ratio, scilicet quod conclusiones quas ego ponam non sunt verae quia directe contradictoriae conclusionibus approbatis in communitate.

Primo apparet unum quod tale medium arguendi non est natum facere evidentiam de conclusione. Unde etsi Deus solum diceret caeco: albedo est color pulcherrimus colorum, et sciret caecus quod esset Deus, non tamen esset ista res evidens sibi quia careret propriis conceptibus terminorum, licet assentiret huic complexo sicut vero. Nunc in speculativis non quaerimus nisi ipsum scire ut res veniat in apparentia apud animam. Non est sicut in observantiis legalibus ubi quaeritur non cognitio sed opus; et ideo ibi talibus argumentis utitur legislator ut homines inducat ad assensum; nam scit quod assensu posito sequetur opus.[8] Sed hic non quaerimus nisi evidentiam, et ideo non videtur quod dignum sit uti talibus argumentis; sed quaeramus veritatem quaesitorum in propositionibus per se notis et in experimentis. Item si aliquis arestet se talibus maximis, erit statim sub incerto quia etiam dicam quod non est verisimile Aristotelis doctrinam esse bonam qui contradixit omnibus qui eum praecesserunt. Item tu non potes concludere per tuum medium nisi istam conclusionem: verisimile est quod non sit bona tua doctrina etc.; dico quod, etsi vera sit tua conclusio, non ex hoc destruitur quin possit esse vera quia etiam secundum Aristotelem[9] nihil prohibet quaedam falsa esse probabiliora quibusdam veris. Et licet habeam alios modos reprobativos, taceo propter brevitatem.

Mihi videtur quod nullus est ingenuus natura, qui in inquisitionibus, quae secundum apparentia naturalia dicuntur fieri, ligatur talibus maximis, quod,

[f] Ms. vera. [g] Ms. acquisitum. [h] Ms. ad. [i] Ms. epyke. [j] Ms. me.

[7] Cf. 1137 a 31 ff. [8] Cf. Averroes: *Religion and Philosophy* (*translated by* Mohammad Jamil Ur Rehman), p. 55. [9] Cf. 157 a 24–33.

si essent mille tales, nec crederent conclusionem propositam evidentem in veritate nec oppositam evidentem in falsitate.

Advertendum etiam circa unum quod multum est notandum, quod aliqua potuit esse causa propter quam reverendi patres, qui secuti sunt Aristotelem, voluerunt satis permittere quod dicta Aristotelis haberentur in admiratione et quod homines communitatis magnam fidem adhiberent eis; nam sciverunt quod non omnes ex se nati sunt gaudere bono speculationis, immo si essent sollicitarii, numquam eis occurreret cognitio unius intelligibilis occulti. Nunc si isti non haberent in admiratione dicta Aristotelis ita quod studendo in eis, non crederent acquirere unam magnam scientiam, desperarent de fine speculationis et converterent se ad corporales delectationes. Voluerunt ergo permittere quod sic simpliciter incederent in inquisitione. Nunc video quod res est nimis in extremo; nam pauciores satis quam expediret convertunt se ad naturam rei et plures convertunt se ad intellectus hominum. Ergo ut res reducatur ad medium satis volo ostendere quis sit verus modus occulta inquirendi.

Declaratur circa rationem quamdam suprafactam[k] qua dicitur: omne totum perfectum etc., quod distinctio de universali et particulari ibi facta in quadam solutione contra hoc adducta non sufficit, ut diceretur quod particularia non sunt de perfectione universi; declaratur insufficientia rationis ex declaratione principiorum supra quae erigebatur ratio. Unum principium est quod bonum est apud intellectum pro mensura in quantificando entia et universaliter in determinando dispositiones contingentes in eis ut accipiat quod entia universi sunt rectissime disposita et quod sic res sunt sicut bonum est eas esse et sic non sunt sicut malum esset eas esse. Et ista propositio venit apud intellectum inspecto eo quod contingit in rebus naturae et in rebus artis. In rebus artis est artifici pro[l] mensura bonum; unde sic fit domus sicut existimat bonum esse eam fieri; non fit sine tecto, non fit de plumis,[m] quia omnia ista essent contraria fini a quo bonitas et amabilitas istius domus videtur dependere. Et si non esset bonum, non appareret dispositio sub qua deberet fieri domus quia malum sive negatio boni est infinita, et ideo qua ratione fieret secundum unam dispositionem, eadem ratione secundum aliam vel modis infinitis vel nullo modo. Et sicut bonum et ordinatio videtur pro mensura in arte, sic videtur quod in natura sit et multo magis etiam secundum doctrinam Aristotelis pro quanto arctioribus principiis fieret dependentia in esse. Hoc in rebus naturae esse percipimus ex duobus: primo ex quadam inductione unde non videmus quod lapides, quorum amabilitas videtur esse ut ex his fiant monumenta homini, non sunt sursum in caelo quia de nullo deservirent. Equus non est magnus usque ad caelum, tunc homo non posset ascendere super eum. Dentes anteriores hominis sunt magis acuti ad dividendum cibum et posteriores magis lati ad masticandum; quo exemplo utitur Aristoteles.[10] Et sic in aliis apparet propositio ex causa ut supra [11] in rebus artis quia malum est infinitum et negatio boni; unde tunc non esset intelligibile quare magis fierent sub una dispositione quam sub alia, nec sciremus e quibus haberemus terminare quaesita naturaliter quae oriuntur in nobis super consideratione dispositionis circa entitatem rerum in quantitate et qualitate. Sicut ergo artifex intendit dispositionem convenientissimam effectus et quae est sibi placentissima, sic existimandum quod entia universi sunt sub illa dispositione quae esset magis placens intellectui recto.

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[k] Missing.

[l] Ms. quod.

[m] Ms. pluviis.

[10] Cf. 661 b 5.

[11] Cf. l. 27.

Secundum principium est istud, quod entia universi sunt connexa ad invicem, ita quod quodammodo unum videtur propter alterum; et hoc principium venit apud intellectum quando considerat ex quo oritur apud ipsum amabilitas et placentia rerum; unde tolle conservationem a caumatibus et pluviis, statim videtur tolli bonitas et amabilitas domus; tolle hominem, statim videtur sublata bonitas conservationis et sic in aliis. Et ratio videtur esse propositionis suppositione/facta quod sit aliquod primum ens quia in entibus 2^v non reperitur bonitas nisi ex conjunctione ei quod est primum bonum. Nunc talia entia sub fine non videntur conjungi ei nisi mediante fine sub quo sunt.

Tertium principium est quod videtur sequi ex praecedenti: ex quo universum est sic connexum, nihil est quin sit bonum toti multitudini entium ipsum esse; unde hoc ens est propter illud et illud propter aliud et sic semper.

Quartum principium est istud, quod universum est semper aequaliter perfectum, quia si fieret declinatio ad aliquem gradum imperfectionis, posset fieri ad gradum minorem et sic semper ⟨*in*⟩ infinitum. Item ex suppositione primi entis videtur quod, si omnia fiant secundum exigentiam ejus et non accidat variatio circa ipsum, tunc quicquid exigebat illo tempore, et alio.

Istis principiis philosophi usi sunt, quibus, declaratione eorum sic facta, volo uti ut probabilibus ad ostendendum quod haec res[n] particularis[n] quae nunc est semper sit arguendo sic: omnis res quam nunc esse est ad bonum et ornatum totius multitudinis alicujus totius semper aequaliter perfecti est semper; sed sic est de ista re; nam secundum supradicta non est nisi quia bonum est ipsam esse secundum principium primum suprapositum.[12] Est ad bonum totius multitudinis entium quia universum est totum connexum secundum secundum et tertium principium et universum est semper perfectum secundum quartum principium; ergo ista res semper erit.

Item ex principiis suprapositis[o] videtur quod nihil in universo neque in particulari neque in universali possit esse frustra quia, si esset, tunc esset melius illud non[p] esse quam esse.[p] Igitur cum quodlibet quod est sit bonum esse, nihil videtur posse removeri quin ex hoc contingit deformitas in toto sicut in domo rectissime disposita in qua nihil esset superfluum neque diminutum non posset intelligi fieri ablatio alicujus rei quin cederet ad deformitatem totius domus, sic existimandum in tota multitudine entium.

Amplius arguitur ad conclusionem principalem sic: quando sunt aliqua extrema apud intellectum inter quae sunt aliqua media per abnegationem extremorum, si ad illa extrema sequentur aliqua, et ad medium sequetur aliquid medians inter illa consequentia per abnegationem. Hujus regulae in applicatione ad propositum veritas apparebit. Nunc autem est sic. Ista quasi sunt extrema: numquam aliquod ens esse, omne ens possibile semper esse; videturque mediare quodammodo: entia aliquando esse, ⟨*aliquando*⟩ non esse; nunc vero ad hanc: numquam aliquod ens esse, sequitur: totalis defectus boni erit; ad hanc: omne ens possibile esse, sequetur: semper totale complementum boni erit; ergo ad hanc: aliquando ens esse, aliquando non esse, sequetur: non semper totale complementum boni erit; et ita perfectum non esset semper aequaliter universum.

Propositiones apparent ex eo quod ens et bonum convertuntur; et ideo ad hanc: numquam aliquod ens esse, sequetur ista: numquam bonum esse. Quod ens et bonum convertantur, hoc pervenit apud intellectum ex eo quod ipsum esse semper est in placentia apud intellectum; unde et in nobis accidit displicentia cum credimus transivisse rem ad non esse, et inesset plus nisi quia remotum est per consuetudinem.

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[n] Ms. tres particulares.

[o] Ms. suprapositum.

[p] Ms. esse quam non esse.

[12] Cf. p. 185.

Adhuc autem arguitur ad conclusionem de aeternitate rerum ut videatur qualis responsio ad hanc rationem daretur secundum principia et conclusiones Aristotelis. Arguitur sic: illa conclusio videtur verior secundum quam potest salvari repraemiatio bonorum et punitio malorum eâ secundum quam non sic posset salvari, quoniam de bona ordinatione universi hoc videtur esse quod boni repraemiantur et mali puniantur, et hoc videtur esse de debito justitiae universalis; sed secundum positionem[q] Aristotelis de corruptione rerum non potest salvari quia, cum unusquisque homo transeat ad non esse simpliciter quantum ad omne sibi proprium, non videtur intelligibile quod unus participet plus de bono quam alius. Unde ipsemet videtur intendere in *Ethicis*[13] quod mortuis neque bonum neque malum inest. Numquid ergo ista erit illegitima ordinatio universi?

Nunc secundum dicta de aeternitate rerum facile erit intelligere in quo abundabit bonus a malo. Primo vellet aliquis dicere: imaginemus in homine bono duos spiritus, quorum unus dicitur intelligentia, et alius sensus; et spiritus sensus est sicut subserviens quia exemplaria universalia et divina non sunt nata venire ad spiritum qui dicitur intelligentia nisi quando primum veniunt ad spiritum, qui dicitur sensus, exemplaria particularia et magis materialia. Nunc quando dicitur illud suppositum corrumpi non est nisi segregatio corporum atomalium; remanent spiritus qui dicitur intelligentia et qui dicitur sensus; et isti sicut se habebant in bono, in optima dispositione sic[r] se habebunt infinities secundum quod illa indivisibilia infinities congregabuntur iterato. Et sic jam in hoc abundat bonus a malo qui habebit suam malam dispositionem infinities sicut ille suam bonam. Aliter diceretur quod quando illud suppositum dicitur corrumpi illi duo spiritus erunt praesentes alteri supposito constituto ex atomalibus perfectioribus, et supposito existente majoris flexionis, intelligibilia magis quam prius provenirent ad eos.

Pro Deo rogo ut nullum ad malum ista moveant; nam etsi appareant probabiliora longe, mihi videtur, positis ab Aristotele; tamen sicut multo tempore visa sunt esse probabilia dicta Aristotelis quorum probabilitas nunc forsan diminuetur, sic veniet unus qui tollet probabilitatem ab istis. Adhaereamus quoque legi[s] Christi et credamus quod numquam contingit repraemiatio bonorum neque punitio malorum nisi per illum modum qui est expressus in illa lege sacra.[14]

Rursus quidem ad principale sic: omnis conclusio, si est scibilis formata in terminis entis, est scibilis per conceptus entis vel eorum quae ens consequuntur; sed haec conclusio: non omnes res sunt aeternae, est formata in terminis entis et non scibilis per tales conceptus; ergo non est scibilis, et per consequens non potes dicere istam conclusionem esse demonstratam a Peripateticis. Major nota; secundum adversarium methaphysica est scientia communis,[15] ita quod secundum talem habitum per complexa transcendentia inquiritur veritas circa complexa[t] "quaelibet occulta." Minor apparet; non enim est scibilis per conceptum entis quia ex conceptu entis magis videretur concludi aeternitas/quam deficientia et corruptibilitas; nec per conceptum boni, immo 3r
per illum magis concluditur oppositum; nam melius est quodlibet ens esse aeternum quam non esse ut videtur; nec per pluralitatem quia cum aeternitate entis[u] potest stare pluralitas et distinctio in entibus. Videretur

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[q] Ms. potentiam. [r] Ms. si. [s] Ms. lege. [t] Ms. complexia. [u] Ms. scitis.

[13] Cf. 1100 a 11. [14] Cf. Lappe, p. 38*. [15] Cf. 1060 b 31 ff.

tamen alicui quod haec conclusio esset scibilis et in conceptibus entis, saltem quod sit possibile tale ens esse. Arguitur sic: omne ens quod non includit in suo conceptu repugnantiam est possibile; sed ens corruptibile non includit in conceptu suo repugnantiam quia non est repugnantia in conceptibus quod aliquid nunc sit et postea non sit. Respondetur sic quod illud quod in nullis conceptibus includit repugnantiam illud est possibile; hoc modo est vera major at non minor; ⟨*minor*⟩ vero vera non est sic accipiendo quoniam ens corruptibile includit repugnantiam in conceptibus scilicet ut dicatur: ens pars totius semper aequaliter perfecti corruptibile quod includit repugnantiam et contradictionem;[16] intellige secundum dicta supra in ratione dicente: omne totum perfectum etc.[17] Et si dicas: omnis impossibilitas in conceptibus secundariis reducitur ad impossibilitatem in conceptu primo, dico quod verum est loquendo de conceptu primo qui [v] est possibilis haberi quantum est ex parte rei, sed non oportet quod semper reducitur sic quod nobis sit apparens reductio in conceptum primum qui de facto habetur a nobis.

Item sic ad principale praecipue supposito dicto adversarii Averrois in 2 *Meta.*[18] quod nullum quaesitum sit ignotum perpetuo intellectui humano. Arguitur sic: illa conclusio non videtur probabilis secundum quam aliquod quaesitum esset ignotum perpetuo intellectui humano, immo secundum quod videretur ignotum omni intellectui; sic est ut pone res causantur abscindendo ab aeternitate; pone gradum durationis, puta centum annos; oritur quaesitum quare res in majori mensura durationis non sunt causatae; nec videtur illud quaesitum posse terminari. Et tunc, ut videtur, vel constituuntur sub omni gradu durationis quod videtur esse impossibile quia quicumque gradus finitus durationis detur, adhuc inter ipsum et aeternitatem sunt infiniti gradus; vel ergo sub omni gradu durationis quod videtur esse impossibile ut dictum est; vel sub aliquo et aliquo nunc.

Item contra Aristotelem arguitur, qui ponit res transire de esse ad non esse simpliciter; ponit enim Aristoteles quod amicabilia quae ad alterum proveniunt ex amabilibus quae ad se ipsum;[19] ponit etiam quod propter bonum commune debet vir probus [w] exponere se morti. Nunc igitur quomodo stant ista simul ut sic arguatur? Nulla res cui est summe amabile suum esse debet facere actum tendentem ad destructionem sui esse; sed sic est in proposito secundum ipsum. Non autem sic secundum conclusionem quam ponimus; melius enim secundum ipsam poterit suaderi quod sit moriendum propter bonum commune quam secundum praedictam suam conclusionem quoniam non posuimus translationem ad non esse simpliciter. [Et si iste rationes.] [x]

De actibus igitur animae magis videbitur in tractatu speciali de anima, an sit unus intellectus respectu omnium, et si unus, utrum sit unus actus intelligendi in numero vel plures et sic de quibusdam aliis. Nolo tamen nunc esse multum sollicitus in dissolvendo omnes dubitationes contingentes circa conclusionem propositam. Spero quod alias oportebit me iterato loqui de ista materia; et si non oporteat, in specialibus tractatibus de his dicam.

Considerandum quia supradixi [20] quod quando res dicitur corrumpi non est aliud nisi segregatio corporum quae dispergunt se et dividunt se; et licet hoc in aliquibus satis sit manifestum, tamen non in omnibus est ita manifestum ad sensum sicut cum [y] granum dividitur a palea bene est manifestum.

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[v] Ms. quae.
[w] Ms. probet.
[x] Cf. p. 203 l. 19.
[y] Ms. contra.

[16] Cf. Lappe, p. 39*.
[17] Cf. p. 185.
[18] Cf. II *Meta. tx. com.* 1.
[19] Cf. 1169 a 11 ff.
[20] Cf. p. 187.

Nunc sciendum quod aliqui sunt homines qui nullas propositiones volunt recipere nisi veniant in apparentia apud sensum; unde si, quando dicitur albedo corrumpi, viderent quod modiculae albedines ad modum granorum sinapis dividerent se, tunc crederent illud et semper tales petunt qualiter est hoc, et nolunt credere nisi homo sic ostendat ad sensum; et tamen non omnes veritates sunt a nobis praeostensibiles. Unde quidam vident multa abstrahendo et resolvendo[z] quae numquam isti vident et satis considerant quod non omnia sunt nata venire in apparentia tali apud sensum. Pone quidem et habebis simile disceptationi quae nunc contingit inter homines; in aliqua terra non sunt aliquae personae nisi caecae a nativitate; si inter istos sint aliqui qui desiderant scire et affectant veritatem, dicet interdum unus: videtis domini qualiter non possumus incedere recte per vias, immo incidimus in foveas multotiens; vere non credo quod tota species humana sit sub tali exorbitate; nam desiderium naturale quod habemus ad recte incedendum non est frustra in tota specie; unde credo quod sunt aliqui homines quibus sit[a] communicatum principium rectificandi se. Dicet alius: tu ponis directe contra sensum; quale esset illud principium, non intellectus quia illum habemus, non tamen recte incedimus; non gustus, non olfactus; isti sensus nihil faciunt. Et vere aliter non poterit facere per suum medium methaphysicum allegatum de desiderio naturali, quod alter assentiat sibi quia aliter non poterit facere quod res veniat in apparentia apud sensum illius, quia hoc non posset facere nisi faceret ipsum videre, et ita largiendo sibi potentiam visivam; et tamen ille habebit certitudinem per suum medium metaphysicum et sciet quod multa possunt esse quae non sunt nata pervenire apud sensum eorum, saltem non est repugnantia.

Sic hic habeo media satis probabilia ad concludendum quod conclusio de aeternitate rerum est probabilis, sed quia non possum ostendere illas modiculas albedines ad modum granorum ire et venire, aliqui forsan discredent; non tamen propter hoc est negandum. Et forsan incident in poenis ut dicant me negare per se nota ut ille caecus ignorans diceret alteri scienti. Considerent isti quod multa sunt quae non sunt nata venire in evidentia apud sensum. Unde ut forsan dicetur infra in tractatu de indivisibilibus,[21] est quaedam rota in horologio quae movetur, et tamen quantumcumque aliquis defigeret aspectum suum, non videret eam / moveri; similiter sagitta in aëre, quanto 3^{v} velocius movetur, tanto minus videtur moveri, et ita in tantum posset motus ut videtur velocitari quod non appareret. Ludunt enim pueri cum quibusdam instrumentis videlicet piroella, troco sine corda et cum corda, et quanto ista velocius moventur, tanto minus dicuntur moveri, in tantum quod quando multum velociter movetur aliquod eorum, videtur ipsum quiescere, et dicunt pueri quod dormit. Debet etiam hoc specialiter movere quia secundum tenentes conclusiones Aristotelis, multa sunt quae non sunt bene imaginabilia primo aspectu;[22] et tamen homines propter auctoritates Aristotelis, vel dignificemus magis ipsos, et dicamus propter rationes quas nesciverunt solvere, tandem spreverunt imaginationem et adhaeserunt rationi. Dicunt siquidem si sit unus mons qui videatur a viginti leucis, hoc est quia causat quasdam realitates quas vocant species et illae multiplicant se per totum medium, ita quod sunt infinitae et infinities, et semper sic multiplicant se, donec veniant ad visum et totum fit in instanti; in sono fit successive et tamen quasi subito videtur fieri. Ponunt etiam memoriam [23] quae reservat species intentionum non sensatarum quae aliquando movent, aliquando non, et multa talia.

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[z] Ms. resonendo.

[a] Ms. sint.

[21] Cf. p. 196.

[22] Cf. 428 a 11 ff.

Nunc ex nostra parte non ponimus aliquas tales res de novo causari ab objectis,[b] sed solum dicimus quod objecto praesente visui, oculo aperto etc., accipe in hoc concurrentia, aliqua realitas est nunc praesens animae quae prius non erat praesens; erat tamen. Nec dicimus quod resolvantur particularia atomalia, sed solum quasi per quemdam motum specialem [24] ibi imaginatum aliquando est huic rei praesens aliquando non. Et forsan si dederit Deus, faciam [c] specialem tractatum de anima ubi plura videbuntur de istis.

Et sic dixerimus quod res quae dicuntur permanentes sunt aeternae; nunc autem si esset etc. Et si ponantur res esse aeternae, ut supra, non apparebit qualiter nobilitas unius rei supra aliam possit probari; nam non probabitur ex efficientia quae attendatur respectu alicujus esse novi. Et verum est quod etiam difficultas contingit ponentibus generationem et corruptionem secundum intellectum Aristotelis; nam secundum hoc videtur concludi quod virtus generativa in homine sit nobilior quam virtus intellectiva agens quoniam omnis virtus activa cujus effectus est nobilior videtur esse nobilior; nunc sic est; effectus hujus est substantia; effectus illius accidens; modo secundum Aristotelem [25] omnis substantia nobilior est quolibet accidente. Et ex isto sumeretur argumentum cum ceteris suprapositis quod res naturales sint aeternae quia, si oppositum, sequeretur hoc absurdum quod virtus generativa esset nobilior quam intellectiva agens.

Item secundum eos medium efficientiae non est sufficiens quia Deus est nobilissimum entium et tamen secundum eos, saltem plures eorum, nullius rei est efficiens secundum apparentia naturalia.

Item gradus indivisibilis videtur nobilior natura specifica siquidem sit posterius generatione, et ea, quae sic sunt posterior generatione, videntur esse priora perfectione ut videtur Aristoteles dicere in 8 *Phys.*; [26] et tamen non videtur habere aliquam efficientiam.

Item receptio alicujus qualitatis vel accidentis quodcumque sit illud non videtur esse sufficiens medium quia omne agens nobilius est patiente; *libro* [d] *de Anima*.[27] Difficultas ergo contingit eis in terminando certitudinaliter illud problema.

Secundum intellectum suprapositum de aeternitate rerum conjecturando diceretur sic quod sicut apud gustum ille sapor dicitur melior qui magis attrahit gustum et ex parte visus ille color, sic ex parte intellectus illud ens videtur nobilius et perfectius quod magis ei complacet et in quo magis naturaliter delectatur vel quod sibi magis complacens est ex sui natura. Nunc si compares hominem ad asinum vel equum et equum ad lapidem, magis quietatur naturaliter et complacet sibi esse hoc quam illud. Unde homo scit quod quodammodo exemplaria omnium rerum proveniunt apud ipsum, ita quod quodammodo videtur esse omnia.

Et sicut est in naturalibus sensibilibus quod res movent se ad unigenea ut ignis ad ignem in concavo orbis lunae, terra ad centrum, ita non videtur quod illa entia, quae sic veniunt apud animam, veniant nisi propter quamdam unigeneitatem.[28] Et hoc videtur attestari super nobilitate et super perfectione: illud non videtur inesse lapidi. Unde non sunt aliqua per quae cognoscamus hoc inesse sibi; igitur homo nobilior et perfectior lapide. Locutus sum de unigeneitate; quod dixi verum credo; et ideo qui de terra loquitur ita quod exemplaria vilia veniunt ad animas eorum videtur aliquo modo anima ipsius esse unigenea et ideo vilis.

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[b] Ms. abiectis.

[c] Ms. faciem.

[d] Ms. hoc?

[23] Cf. 450 a 28 ff.

[24] Cf. Lappe, p. 40*; Ms. spālē; cf. pp. 205 l. 30 & 225 l. 32.

[25] Cf. II *de Anima tx. com.* 2; 412 a 20 ff.

[26] Cf. VIII *Phys. tx. com.* 58; 261 a 15 ff.

[27] Cf. 430 a 18.

[28] Cf. Lappe, p. 40*.

De corporibus caelestibus ratione figurae quantitatis, motus luminis, mutationis[e] in entibus, quae videtur esse sequela mutationum corporum caelestium, conjecturamus ibi esse nobilitatem, unde et multum placent; et conjecturamus quod magis placerent et quietarent si sciremus omnia quae ipsis insunt. In istis vero non video quod bene possint haberi[f] rationes demonstrativae; verumtamen quae dicta sunt sufficiunt ad quaesiti responsionem. Sunt ergo res aeternae.

Quod quidem ulterius potest probari sic: nihil simpliciter falsum debet dici quod colligat totam multitudinem hominum in ordine ad operationes politicas et universaliter ad finem totius speciei humanae; nam ista ordinatio universi non videretur esse decens neque recta. Nunc vero omnes homines, qualiscumque sectae fuerint, uniunt se ad bene agendum propter aeternitatem creditam; ergo istud non debet dici simpliciter et omnino falsum. Nunc autem occurrunt duo modi dicendi: unus ut diceretur quod transirent ad non esse et postea resurgerent, et licet iste modus esset verius simpliciter, tamen oppositum dicitur fuisse de intentione Aristotelis. Dicit enim in 5 *Phys.*:[29] illa quorum substantia deperit non redeunt eadem numero. Secundus modus occurrit ut negaretur translatio ad non esse et in hoc esset concessio propositi ut certum est. Sed contra hanc conclusionem de aeternitate rerum occurrit difficile medium. Cum homo proicit lapidem, vel in lapide, qui movetur sublata manu hominis, est aliquid quod prius non fuit, et tunc propositum ut videtur; vel nihil, quod non potest dici quia illa indivisibilia quae sunt in lapide sunt nata moveri deorsum.[g] Potest dici secundum intellectum Platonis quem recitat commentator Averrois in 4 *Phys.*:[30] ibi nihil est quin prius fuerit; sic ergo fit motus lapidis secundum Platonem quod manus movetur et / cedit sibi lapis, 4ʳ lapidi cedit pars aëris, illi parti[h] alia pars aëris succedit quae movet projectum, et sic usque ad aliquid determinatum secundum quod primus aër, qui cessit, fuit major vel in tali figura motus; vel diceretur quod lapidi est aliquid praesens quod non erat prius praesens; erat tamen, sicut secundum veritatem simpliciter et fidem Catholicam sunt aliqua entia ut puta angeli qui non habent esse circumscriptivum in loco, sed tantum ubi diffinitivum, hoc est quod sic sunt praesentes isti loco quod non alteri.

Amplius probatur conclusio principalis sic: non debet res magis poni durare in esse diminuto quam in esse simpliciter, immo magis e contra, cum esse simpliciter sit magis sub intentione naturae. Nunc autem cum Socrates dicitur corruptus, durat adhuc in esse diminuto apud materiam puta in memoria; quare etc.

Item facio unum argumentum quod forsan ostendetur non valere; sequeretur quod de albedine quam videmus non essemus certi quod esset eadem sibi nunc et prius, quia medium illud non sufficit: albedo quae est nunc et albedo prior omnino uniuntur apud sensum. Nunc secundum illa quibus utuntur homines istud non sufficit quia accipiam duas albedines aequales, albedinem Socratis et albedinem Platonis; istae omnino uniuntur apud sensum, et tamen non sunt omnino una albedo ut dicunt; nec sufficit identitas situs vel loci quia in eodem loco numero possunt diversae res succedere sibi invicem. Non video sic inducendo quod possit esse aliud medium nisi arguendo: prius fuit, ergo nunc est, et ita eadem sibi nunc et prius; et probaretur consequentia per argumenta supra adducta [31] pro aeternitate rerum: omnis pars totius semper aequaliter perfecti est semper etc. Nec reputet aliquis ridiculum recurrere ad media de aeternitate rerum supra adducta quia sunt metaphysicalia et talia sunt certissima ut dicit Aristoteles in *prooemio Meta.*,[32] et nedum, ut dicunt expositores, sunt certa ex natura rei, sed etiam ad nos si quis esset natus eis uti. Unde dependent ex propositionibus quae non accipiuntur a sensu nisi occasionaliter.

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[e] Ms. mutatio. [f] Ms. hr̄. [g] Ms. deois. [h] Ms. per.

[29] Cf. V. *Phys. tx. com.* 37; 228 a 7 ff.

[30] Cf. IV *Phys. tx. com.* 68; cf. *Timaeus*, 80 c.

Adhuc autem si res transirent de non esse ad esse, sequeretur quod esset necessarium aliquid esse quod subiceretur quod esset materia, et aliquid quod esset forma in esse; sic enim ponit Aristoteles generationem.[33] Nunc vero non est necessarium esse materiam quia hoc esset maxime propter duas rationes quarum prima esset ratio Aristotelis ut videtur: sicut est in transmutatione accidentali, sic est in transmutatione substantiali; sed in illa est dare aliquid quod subicitur terminis mutationis, ut si aliquid mutatur de albedine in nigredinem est dare superficiem quae subicitur et albedini et nigredini. Sed ista ratio cogit ponere materiam quia, si in transmutatione accidentali requiratur subjectum, hoc non est nisi quia accidentia secundum Aristotelem sunt entia secundum quid ita quod non sunt nata existere per se;[34] non ex hoc sequitur quod sic sit in generatione substantiae; unde idem Aristoteles in 7 *Meta.*[35] videtur intendere quod accidentia non sunt entia nisi quia entis.

Alia ratio ad probandum materiam primam esse videtur esse Commentatoris; [36] nam si non esset materia prima sequeretur alterum duorum, vel quod transmutatum esset sine transmutatione, vel quod transmutatio fundaretur in non ente quia vel est transmutatio, vel non est; si non sit, et certum est quod aliquid est transmutatum de non esse in esse; ergo transmutatum erit sine transmutatione; si sit transmutatio, vel ergo habet subjectum non ens, et sic alterum inconveniens; vel terminum a quo vel terminum ad quem; et utrumque est falsum quia isti sunt termini transmutationis; ergo aliquid praeter illa, et illud vocatur materia vel subjectum. Certum est quod ponentibus aeternitatem rerum haec ratio nullo modo concludit quia accipit pro noto aliquid transmutari de non esse ad esse, quod ei negaretur. Dicatur tamen supposito quod ponerem generationem et corruptionem in rebus, ut homines ponunt communiter, adhuc non ponerem materiam primam. Et ad rationem dicerem praemisso quod per hanc orationem: in substantia hoc ens transmutatur, non intelligo aliud nisi: hoc ens est et prius non fuit, nec ibi intelligo aliam rem a non esse et esse; vel si aliquid, intelligerem respectum fundatum [i] in ente.[37] Si dicas contra: dicitur enim acquisitum est ens per transmutationem, dicerem haec: si sit vera, debet sic intelligi ut dicatur: ens quod transmutatur est et prius non fuit; et propter replicationes quia ille qui dicit: hoc ens transmutatur, videtur semper intelligere aliquid per modum subjecti, dicam: tollas illud verbum "transmutatur" et accipias "omnia apparentia" et videas an ex illis necessario subjectum concludatur. Apparentia enim secundum eos sunt: res est quae prius non fuit, vel res non est quae prius fuit; hoc est notum secundum eos vel verius conclusum; nunc autem numquam ex istis propositionibus concluderetur subjectum. Et si dicas: antiqui [38] in hoc convenerunt quod ex nihilo ⟨*nihil*⟩ fit,[39] dicam: si antiqui per hanc propositionem voluerunt denotare ordinem naturalem qui [j] est inter entia, nam quando unum ens generatur aliud corrumpitur et ita nihil generatur quin praecesserit aliquid ad quod illud quod fit habebat ordinem naturalem in fieri; sic intellectus eorum esset verus secundum illam opinionem. Si vero aliud vellent intelligere per propositionem supradictam, negaretur eis. Et sic esto quod ponerem generationem et corruptionem in rebus ut communiter, non tamen ponerem materiam primam, et antequam mihi occurrisset conclusio de aeternitate rerum sic dicebam.

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[i] Ms. fundant.

[31] Cf. p. 186.

[32] Cf. 981 a 21 ff.

[33] Cf. 190 b 1; 1044 b 21 ff.

[34] Cf. 1025 a 20–25.

[35] Cf. 1045 b 29 ff.; cf. VII *Meta. tx. com.* 2.

[36] Cf. I *Phys. tx. com.* 63.

[37] Cf. Lappe, p. 40*.

[38] Cf. 187 a 26.

Circa praedicta dubitatur resumendo quoddam argumentum supratactum [40] aliqualiter, videlicet quia ex conceptu pluralitatis videtur non aeternitas posse ostendi quoniam tot sunt res in natura quot sunt possibiles ut supra dicebatur;[41] sed corruptibiles sunt possibiles ut videtur et supra declarabatur [42] et ponatur sic: sicut individuum est possibile esse in natura, sic aequale sibi; neutrum tamen simul existet quia alterum superflueret; existent ergo successive et secundum hoc semper remanebit universum aequaliter perfectum, et melius est sic per substitutiones ut ponatur tanta pluralitas quanta est possibilis. Et secundum ista possent respondere ad rationem quam suprafecimus[43] pro aeternitate rerum; nam scitur per illud medium quod dictum est quod res aliquae sunt corruptibiles uti quod transiunt ad non esse. Aut ergo sunt illae quae semper sunt in apparentia, et hoc est falsum et loqui contra sensum, vel sunt illae res quae non sunt semper in appa/rentia, et tunc 4v
vel habent non esse quando sunt in apparentia, et hoc contra sensum est, vel habent non esse quando non sunt in apparentia, et in hoc esset propositum. Ad istud argumentum quod videtur tollere aeternitatem rerum respondeo: cum dicitur quod pluralitas est ponenda, satis concedo, licet sine necessitate non debeat poni ut ipsimet dicunt.[44] Sed dico quod aeternitas non videtur tollere pluralitatem quia imaginetis quot res vis, adhuc illae possunt esse aeternae; de hoc quidem [k] dicebatur, immo quia imaginamur aliquod individuum aequale, et hic dico quod pluralitas non debet poni nisi ad manifestationem primi entis; nunc cum alterum sit aequale omnino, idem sunt quantum ad primum ens et ita frustra poneretur corrumpi. Item unum individuum non excludit aliud quod si dicas: hoc non est nisi quia alterum superflueret, et ita tantum est bonum unum esse quantum si par rerum.

Cum arguebatur quod desiderium naturale hominum quod est ad aeternitatem non est frustra ut videtur,[45] arguitur contra primo quia videmus quod multa sunt frustra ut aliquis habet desiderium naturale essendi ad aliquem locum et tamen numquam erit ibi. Hoc non obstat, immo videtur confirmare magis propositum: illud desiderium naturale est res quae semper erit et licet non sequatur nunc itio ad talem rem, alias sequetur nec etiam est nunc frustra. Propter quod sciendum est quod in hac materia sic imaginor: quaelibet res est sub intentione naturae primo per se ipsam, ita quod quaelibet res habet quasi propriam deitatem et propriam bonitatem, et secundum hoc est sub intentione naturae primo, et secundario quantum ad intentionem secundariam reperitur connexio quodammodo inter entia, ita quod unum est propter aliud. Nunc igitur si ad rem numquam sequeretur illud propter quod est secundario, videretur inconveniens; sed si aliquo tempore non sequatur, non videtur inconveniens quia remanet ratio prima secundum quam erat sub intentione naturae, et ita diceretur hic. Unde istud desiderium est aliqua res ad quam aliquando sequetur motus ad Nostram Dominam.[46]

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[j] Ms. quae.

[k] Ms. quaedam.

[39] Cf. Lappe, p. 40*.

[40] Cf. p. 187.

[41] Cf. p. 188.

[42] Cf. *ibid.*

[43] Cf. p. 191.

[44] Cf. Ockam I *Sent.*, 27, 2K; also 665 b 15.

[45] Cf. II *Meta. tx. com.* 1.

Aliter autem ad dictam rationem vellent forsan quidam de Vico Straminum [47] respondere. Cum dicitur: tunc desiderium naturale esset frustra, dicerent quod non quia homines consequuntur suum intentum; considerant aeternitatem; habent enim eam in anima intellectiva quam posuit Aristoteles,[48] ut sibi attribuunt, esse aeternam. Sed istud non valet quia nedum homines desiderant aeternitatem, sed sic eam desiderant quod quilibet desiderat eam consequi in alio proprio sibi. Modo anima intellectiva secundum eos sic est communis quod est una in numero in omnibus hominibus.[49]

Sed dubitatur circa illud quod dictum est quod desiderium naturale est aliquando praesens alicui supposito quod ibit ad Nostram Dominam, et universaliter de aliis actibus animae, et aliquando alii; determinetur ergo ille modus praesentiae. Dico quod non bene est qualificabilis seu determinabilis modus ille; sed non hoc singulariter contingit ei qui ponit aeternitatem in rebus, sed etiam aliis; nam nec est apparens, si intellectus sit unus in numero in omnibus hominibus, qualem modum praesentiae habet ad quodlibet suppositum; etiam quod videtur notius, non est apparens quid intelligendum sit per hunc sermonem: accidens inhaeret subjecto. Unde verum est quod intellectus quasi videtur abstrahere conceptum istum inhaerentiae a quibusdam rebus ut cum dicit: pellis inhaeret ossibus, et postea ipsum applicat ad accidens et subjectum quasi fingendo quod ibi habeat locum. Sed quantum ad veritatem non est apparens qualiter res se habeat; similiter intelligentia non ponitur inhaerere. Qualis igitur est modus praesentiae ad orbem non facile est dicere. Unde in aliquibus habemus conceptum quasi per conceptum quia est, vel si est, sed non habemus conceptum aliquem per modum quid vel qualis. Et esset simile si caeco diceret ens quod non potest mentiri, et hoc sciret caecus ut supra dicebatur,[50] videlicet quod albedo est pulcherrimus color colorum, sciret caecus quod hoc esset verum, et tamen nesciret quiddificare nec qualificare sermonem suum; sic hic satis concludimus actum intelligendi esse nunc praesentem isti supposito, immo satis videtur apparere, et tamen non possumus qualificare praesentiam.

Item autem arguitur pro aeternitate praecipue secundum eos [51] qui ponunt pluralitatem rationum formalium in eodem supposito; nam secundum eos albedo quae [1] est in pariete, quando succedere dicitur nigredo, non transit secundum aliquid quod sit in apparentia quia non est in apparentia nisi secundum aliquid commune sibi et alii albedini sibi aequali; unde illae omnino uniuntur apud sensum. Nunc secundum illud in quo convenit cum alia albedine non transit nisi extrinsece ratione gradus individualis; igitur cum non transeat secundum illud esse quod erat in apparentia et secundum aliud non apparet transire ad non esse, videtur quod nullo modo transeat ad non esse. Et videtur quod isti qui tenent pluralitatem rationum formalium faciliter deberent converti ad opinionem de aeternitate; nam secundum eos oportet dicere quando dicitur hic: albedo quae erat in pariete corrumpitur, quod aliquid quod erat ibi non est corruptum, et tamen nihil apparet ibi de illo quod prius apparebat ibi. Quid autem dicendum de tali pluralitate rationum

[1] Ms. qui.

[46] Cf. Lappe, p. 40*.

[47] *Rue Fouarre, Paris; Perhaps* Siger de Brabant; cf. *Les Philosophes Belges*, XII, 301.

[48] Cf. II *De Anima tx. com.* 21.

[49] Cf. P. 206, n. 95.

[50] Cf. p. 189.

[51] Cf. Duns Scotus *Rep. Par.* IV, 10, 3, 35 ad 2.

formalium nunc non est de rebus subjectis intentioni nostri; tamen ex incidenti videtur mihi quod sit probabilius dicere quod in albedine Socratis et albedine Platonis est aliquid unum ex parte rei et sic unum quod praecisum a quocumque posteriori de se nullo modo distinguitur in eis, et illud voco naturam specificam. Quod sit sic ostenditur et dato quod aliqui faciant multas rationes quae sunt magnae abstractionis, non aestimo probabiliorem ista ut dicatur: illa quae omnino uniuntur apud sensum et apud intellectum habent unitatem ex natura rei; nam ubi intellectus invenit ex parte rei, ubi potest significare bis hoc stare, tunc dicit ibi esse pluralitatem; ubi non nisi semel, ibi habet dicere unitatem. Nunc cum omnino sint unum in sensu et intellectu, apparet quod intellectus non potest significare bis hoc sine reiteratione; sed sic est; accipiantur duae albedines aequales; istae omnino sunt unum in sensu et intellectu.[52] Sed tu dices: in majore verum est si omnino uniantur apud sensum et intellectum sic, quod intellectus non habeat neque a priori neque a posteriori unde possit ponere diversitatem. Sed sic non est hic, immo intellectus per diversitatem situs ponit differentiam; nam evidens est intellectui quod una res non potest esse in pluribus locis simul. Contra: quaero de majore assumpta prius quae fuit illa: quae omnino uniuntur de se apud sensum et intellectum sunt unum aliqualiter ex natura rei; aut ista sic sumpta est vera necessario, aut potest non esse vera; si primum, propositum / quia satis 5r concedis minorem; si vero sic sumpta possit non esse vera, tunc non habebimus aliquam certitudinem quod aliqua res sit eadem sibi nunc et prius quia unitas apud sensum et intellectum non sufficiet; non sufficit unitas loci quia diversae res possunt sibi succedere in eodem loco. Item non debet removeri nisi identitas de qua concludit tuum medium adductum de diversitate locorum, sed non nisi de eodem numero vel de constitutione [m] formali illius suppositi quod est idem numero; verum est quod tale non potest esse in pluribus locis, sed quin ratio speciei possit, non est verum.

Sed videtur quod non solum inter istas albedines probabo identitatem in ratione speciei, sed identitatem omnino quod quale est medium ad probandum quod haec albedo sit eadem sibi nunc et prius omnino, quoniam ad hoc non videtur aliud medium secundum supradictam nisi quia omnino apud sensum et intellectum; et hoc medium non sufficit ad probandum de hac albedine demonstrata quod sit omnino eadem sibi nunc et prius. Vel diceremus: habemus medium ad probandum identitatem, et quia nullum occurrit ad probandum diversitatem, ideo non ponimus ipsam, et tunc hoc non est habere plenam certitudinem; hic tamen habemus medium ad probandum diversitatem scilicet locorum; igitur probavimus identitatem in natura et diversitatem in gradu individuali; et ille gradus non venit per se apud sensum; nam haec albedo non videtur nisi secundum aliquid commune sibi et alii albedini sibi aequali. Unde de ipsa [n] habemus quasi conceptum quia est, sed non habemus conceptum quid vel conceptum per modum qualis secundum supradicta de caeco [53] cui si loqueretur aliquis qui non posset mentiri, et hoc sciret caecus, et diceret ei: albedo est pulcherrimus color colorum, haberet caecus conceptum quia esset, sed non haberet conceptum quid. Unde si peteretur ab eo: quid est quod loqueris?, diceret: nescio; igitur cum quaeritur an talis gradus sit nobilior natura acceptus in sua praecisione, cum lateat conceptus qui deberet esse medium terminandi illud quaesitum, non potest plene terminari.

[m] Ms. constitutive.

[n] Ms. ipso.

[52] Cf. Lappe, p. 38*.

[53] Cf. p. 194.

Quodcumque tamen dicatur, non video impossibilia sequi. Si dicatur quod nobilior; contra videtur quod non habet operationem; hoc non obstat quia nec nobilitas Dei attenditur in alio a se quod sibi insit;[o] unde ipse gradus finit et est ipsius operatio sicut finis quia omnia quae praecedunt sunt propter ipsum. Si diceretur quod innobilior, non multum obstat illud quod dicitur quia posteriora via generationis sunt perfectiora quia secundum nos non est generatio, et esto quod esset, non video quod illa regula possit probari nisi per inductionem in aliquibus, et tales inductiones quando non confirmantur per causam sunt sicut argumentum Prisciani: si ordo est in aliquibus, ordo est in omnibus. Non plus nunc de hac materia; forsan alias plus dicetur, nam confirmatio hujus conclusionis multum praeparabit intellectus hominum ad conclusionem de aeternitate secundum dicta supra; nam quando albedini dicitur succedere nigredo, non desinit esse in apparentia secundum illud in quo conveniebat cum alia albedine, et tamen nihil aliud erat prius in apparentia et ita quantum erat prius in apparentia, tantum est nunc.

Dubitantes adhuc contra rationem primo adductam [54] pro aeternitate rerum in cujus minore dicebatur quod non sequitur: non apparet, ergo non est. Contra: tunc te non existente ibi non essemus certi quin esses alibi quia non sequitur: tu ibi non appares, ergo tu non es; dicendum quod immo quod satis erimus certi quia tu sic existens in ratione suppositi non es alibi quia positis illis ad quae sequetur apparentia, et ut ad ipsa sequitur, ponitur apparentia. Nunc sic est, nam non ponimus in posito indivisibilia dispersa, sed ponimus quod sic sunt congregata, ita quod sicut [p] suppositum nunc est nunc hic, sic alibi. Item propter aliud est evidens te esse ibi nunc, hoc posito, evidens est intellectui quod tu non es alibi quia non est intelligibile quod unum suppositum sit simul in pluribus locis; et ita per non apparentiam secundum hoc non probaretur. Sed adhuc dubitatur ex alio quia secundum hoc non posset probari de aliquo quod movetur quin semper moveretur quia non sequetur: non apparet moveri, ergo non movetur, ut in quadam rota quae est in horologio quae movetur, nec apparet; et dico quod vel tu loqueris in aliquo supposito sensibili quod movetur motu recto, et tunc scitur non moveri, quia apparet hic nunc et prius; ergo est hic nunc et prius, et ita non alibi ut [q] supra, [55] vel in illo quod movetur motu circulari, tunc non est certum omnino an moveatur si non appareat ex postfacto, ut si in illa rota quae est in horologio poneretur signum aliquod, tunc appareret mutatum esse cum motus prius infuisset.

Nunc contra aliqua fundamenta supradictorum arguitur; fundamentum erat conceptus boni. Nunc videtur quod ex ipso non possit certitudinaliter argui in rebus quia homines interdum judicant falsa esse vera, et ita est actus individui oblitus, et ita melius videretur ipsum non esse. Dico et licet sit malus vel imperfectus secundum quid, tamen simpliciter melius est ipsum esse quam non esse. Unde ad illud judicium sequuntur aliqui motus et aliquae operationes bonae quas melius est ⟨*esse*⟩ quam non esse, et sic dixerimus licet videatur destruere unam de rationibus suprapositis. Unde mihi videtur verum conceptus imperfectos quibus nunc utimur, nisi velimus dicere omnia fieri ut contingit quod nihil est in universo quin ipsum sit melius esse quam non esse,[56] et forsan ille de quo dicitur quod false judicat magis debet velle esse sub ista dispositione quam quod omnino cum negatione omnis actus.

[o] Ms. in̄sit.

[p] Ms. est.

[q] Ms. non.

[54] Cf. p. 199.

[55] Cf. p. 189.

[56] Cf. Lappe, p. 38*.

INCIPIT SECUNDUS PROLOGUS

Domino Odoni[57] *ceterisque veritatem*
inquirere volentibus et ipsam agnoscere

Cum in sua consideratione declinaret animus meus ad eos qui inquisitores veritatis secundum apparentia naturalia se dicunt, unum[r] inter cetera quod est de se multum displicibile cuilibet amatori veritatis; nam illi quorum professionis esset per actus quos in nobis experimur et per principia per se nota ex terminis in via discursus ad diversas conclusiones procedere, sic / ambulabant 5^{v} cum vulgo quod in suis inquisitionibus finalis eorum resolutio erat ad conclusiones et dicta Aristotelis et ejus commentatoris Averrois, et eis utebantur ut principiis, et in tantum eis assentiebant quod omnino aestimabant irrationabile arguere contra negantem conclusiones eorum, quasi arguere contra talem esset arguere contra orbatum intellectum. Et ne videar propter quaestum gloriae falsa imponere his de quibus feci sermonem ut propter hoc appareret populo me esse correctorem errorum, adduco aliqua signa et aliquas verisimiles conjecturas quae debent in hac materia sufficere.

Primum est; nam cum noviter ad intelligentiam doctorum hujus universitatis venit quod aliqui asserebant ut probabile quod substantia materialis et quantitas non distinguentur realiter,[58] a majoribus ipsorum audivi quod contra tales non erat dignum arguere quoniam principia negabant per se nota. Modo quaero vel illi reputabant illud esse principium praecise quia dictum ab Aristotele, et tunc propositum, vel quia intellectis terminis natum est statim venire ad intellectum; vel est aliquid quod experimur in nobis; quorum neutrum potest dici quia vel de tali complexo[s] non esset tunc quaestio vel, si esset, facilis multum esset ejus solutio. Nunc autem eorum magister Aristoteles quem ita de prope insequi volunt dixit quod haec quaestio est difficillima; unde eam enumerat inter quaestiones difficillimas in 3 *Meta.* suae prope principium.[59] Et breviter arguatur sic: non debet quis aestimare esse irrationabile arguere contra ponentem alteram partem difficillimae quaestionis quia non diceretur difficillima nisi quaelibet ejus pars haberet ⟨*difficultatem*⟩ vel in se vel propter rationes ex quibus videtur concludi. Sed an substantia et quantitas sint eadem realiter est quaestio difficillima ut dictum est; non igitur rationabiliter contra ponentem alteram partem ejus arguere esse irrationabile aestimandum. Et si hoc reputaverunt esse principium quod non est principium ut apparet manifeste per Aristotelem quem omnino insequuntur, ita non est longe a verisimilitudine quin in aliis uniformiter se habeant, ut praecipue argumenta non habentes ut semper usi Aristotelis conclusionibus tanquam principiis, dicant quod homines negant principia, ubi homo asserit conclusiones veras, licet a consuetis remotas. Haec ergo quisque dimittat et animae suae persuadere curet quod verus philosophus viam vulgi deserens non debet accipere aliqua pro principiis eo quod famosa sint.

Secundum signum confirmans propositum supra est illud; nam doctores qui ad invicem exercitii causa conferunt in determinationibus suis replent quaternos et processus formant longos in verba Aristotelis exponendo. Nunc autem si praecise verba Aristotelis accipiant esse vera propter rationem evidentem, eis superfluum omnino videtur sic considerationem dimittere rerum et se ad verba hominis convertere, nam dubium non est alicui quod brevius fieri poterat si a quolibet exprimeretur ratio propter quam tenebat conclusum.

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[r] *Add* est *or* vidi.?

[s] Ms. complexio.

[57] *Perhaps* Gerardus Odo; cf. *Histoire Littéraire de la France* XXIV, 349.

[58] Ockam IV *Sent.* 4, F ff.

[59] Cf. 996 b 12.

Tertium signum est in docentibus qui in suis quaestionibus de decem rationibus vix unam plenarie resolvunt, sed solum pro majori propositione vel minori [t] allegant dictum Aristotelis seu ejus Commentatoris, ubi tamen propositiones sicut appareret eorum quaternos intuenti [u] nec sunt notae ex terminis nec de his sunt quibus assentit naturaliter intellectus nec est aliquod quod experiamur in nobis.

Haec omnia et plura talia vidit animus meus in quibus esse errorem arbitratus est et deceptionem non modicam, quocirca caritatis zelo ductus opinioni eorum succurendum existimavi. Scit Deus non amore gloriae, sed quia credo quod per inquisitionem ex principiis regnabit veritas in anima et amplius non erit locus falsitati.

Itaque proposui inter cetera contra sic deceptos aliquas conclusiones quas certum fuisse de intellectu Aristotelis et quas in dubium non revocant ostendere ab eis nullo modo fore scitas. In cujusmodi processu erant quam plurimae conclusiones super ⟨*quibus*⟩ non determinando sed dubitando inquiretur.

TRACTATUS PRIMUS

De Aeternitate Rerum

Inprimis autem de rerum aeternitate inquirendum et prius partialiter sub hac forma, an intellectus noster possit dicere sicut conclusionem certam ab eo quod aliquae res absolute permanentes non sunt aeternae, de quibus communiter dicitur quod generantur et corrumpuntur vel quod ad ipsas est alteratio vel motus augmenti.[60] Et probatur primo in rebus in quibus manifestum est magis ut videtur quod sit translatio de non esse ad esse et de esse ad non esse ut in qualitatibus sensibilibus. Sciendum tamen primo quod ostendere quod haec conclusio: non omnes res sunt aeternae, non sit scita a nobis potest esse dupliciter; vel ostendere oppositam esse veram, vel ostendere quod media quae sola viderentur sufficere ad conclusionem propositam ostendendam non sufficiunt. Unde possibile est quod alicui sit istud problema neutrum, et ita non posset in primum modum, sed bene in secundum; primo ergo juxta secundum modum.

Nullus intellectus, cui est certum et evidens aliquam rem esse pro tempore aliquo, pro tempore posteriori potest sub certo dicere illam rem non esse nisi habeat aliquod medium virtualiter inferens notitiam illius negativae propositionis qua dicit rem non esse quae fuit prius; sed de qualitatibus sensibilibus quae nunc sunt est intellectus, vel esse potest, certus quod sunt; ergo pro tempore posteriori non debet negare ipsam esse nisi habeat aliquod medium virtualiter inferens notitiam hujus negativae. Major nota quoniam intellectus cum sit potentia rationalis non debet se mutare de extremo propositionis affirmativae ad extremum negativum nisi causa mutationis inexistente quoniam nec est principium per se notum; nam formetur hoc complexum circa rem quae prius fuit de qua dicitur quod non est, albedo non est; quaero: aut alia est tibi nota ex terminis, aut per experientiam primo ita quod sit aliquid quod experieris in te? Non primo modo quia esset tibi nota semper, et sic quando oppositum inerat erat tibi nota in sua veritate; illa negativa etiam in absentia sensus esset nota intellectis terminis. Nec secundo modo quia illud solum ex-

[t] Ms. ve mi^{ri}.

[u] Ms. intuetici.

[60] C.f Lappe, p. 37*.

perimur in nobis, videlicet quod ante succedit nigredo videtur desinere actus apparitionis qui in nobis erat, ita quod amplius non experimur in nobis actum visionis qui inerat prius. Cum igitur nota non sit ut principium, ergo ut conclusio et sic virtute alicujus medii.

Sed non est aliquod medium inferens / notitiam hujus negativae qua dici- 6r
tur: res seu albedo non est, quia aut ambae propositiones illius medii sunt notae ex terminis vel per experientiam; non ex terminis probabo quia si essent notae ex terminis seu dependentes ex talibus, semper illis intellectis intelligeretur talis propositio, et sic in absentia ipsius albedinis haberet aliquis certitudinem de ea. Oportet ergo quod sit nota per experientiam ex actibus sensuum quos experimur in nobis. Aut ergo propositio: haec albedo non est, assumpta est ex actu sensus positivo vel ex desitione [v] actus sensus qui primo experiebatur circa albedinem; non ex primo quia ex illo magis concluderetur albedo esse quam non esse; ergo ex secundo, videlicet ex desitione actus qui primo experiebatur circa albedinem. Si ergo fit aliquod medium conveniens ad illam conclusionem: albedo quae prius erat non est, videtur esse istud quod dictum est. Et hoc apparet ex alio quia illud videtur mediare apud intellectum respectu alicujus complexi ad quod quasi naturaliter recurritur cum quaeritur de complexo. Sed cum quaeritur: est ista aqua calida?, statim recurrunt homines ad actum tactus; cum quaeritur: estne hic paries albus?, recurritur ad actum visus et sic in aliis. Et licet apud quosdam juvenes medium quod magis videretur sufficere esset: quia nigredo inest; ergo albedo non; tamen istud non potest mediare primo apud intellectum quia quod intellectus dicat: adveniente nigredine tollitur albedo, hoc non est nisi quia vidit quod adveniente nigredine desinit apud sensum visus apparitio albedinis, et sic videtur quod illud medium debet dici illud in quod omnia alia tandem resolvuntur, et quod ipsum videtur sufficere.

Pertractare autem omnia media quae possent dari longum esset et vanum et satis consuetum est quod probabilius et magis conveniens quaesito assumatur; et si sit alius, ille qui dicit conclusionem ut certam sibi debet ipsum ponere; nam et alias cogeremur vagari quasi per infinita media. Similiter satis probatum est quod non est aliud medium, vel si est, reducitur in istud tanquam in medium fundamentale.

Nunc autem ostenditur quod medium desitionis apparentiae non sufficit ad concludendum quod res non sit, et formemus illud medium ut magis appareat virtus ejus sic arguendo: omnis res quae prius apparebat ad sensum et modo non apparet ad quodcumque ubi sensus defigeret aspectum suum, illud non est; sed sic est de albedine quae prius apparebat et modo non apparet; ergo etc. Quod enim ratio haec non concludat ostendi potest ex tribus quorum primus modus inter alios mihi probabilior esse videtur, licet non habeam conclusionem [w] evidenter demonstrantem, et est hic: dicatur ad majorem quod veritatem non continet; nam formae naturales sunt ita divisibiles in minima quod seorsum divisa a toto non possent habere actionem suam et ita licet ipsa existentia in toto videantur, dispersa tamen et divisa seu segregata non videntur. Hoc enim veritatem habet etiam secundum intellectum Aristotelis dicentis: entia naturalia esse terminata ad maximum et minimum.[61]

Secundus modus esset ut diceretur quod sicut potentia motiva aliquando habet actum suum, hoc est quando movet est in apparentia, et aliquando quiescit, et tunc non est in apparentia, et tamen propter hoc non dicitur quod

[v] Ms. desitr̄e.

[w] Ms. coēm.

[61] Cf. 187 b 35 ff.

sit corrupta. Similiter diceretur de omnibus aliis virtutibus, et tunc cum virtutes hominis, secundum quas attendebatur operatio ejus principalis, quiescunt, tunc dicitur homo esse corruptus, et quando sic fit in omnibus partibus alicujus climatis, tunc dicitur mundus corruptus quantum ad illud clima, et sic fuit infinities et sic erit si mundus secundum apparentia naturalia dicatur esse corruptus.

Tertius modus ut diceretur quod a nulla re subtrahitur ratio apparentiae; nam si vides in facie Socratis albedinem, nigredinem in capillis et cicatricem in fronte, haec omnia videbis quando dicitur esse corruptus, non ubi prius, sed in alio ubi ut albedinem in Johanne, nigredinem in equo, cicatricem in Petro. Sed dices: videbo simile et idem specie, sed non idem numero. Contra: a rebus quae veniunt apud sensum et intellectum ut eaedem omnino, ita quod quantum de se intellectus non ponit distinctionem, non debes negare aliquem gradum identitatis nisi propter diversitatem aliquorum extrinsecorum ex quibus concludatur. Nunc autem istae duae res veniunt omnino apud sensum et intellectum ut eaedem ut de duobus ovis similibus totaliter, ita quod nihil diversitatis concipitur nisi diversitas situs, ita quod situ sublato nulla ibi conciperetur; ergo si sit diversitas, ab extrinseco venit ut arguatur tali modo: illa quae sunt in diversis locis numero saltem sunt diversa numero; sed istae duae albedines sunt ⟨*in diversis*⟩ locis numero ut notum est per visum; ergo sunt diversae numero cum idem non possit esse in diversis locis.

Hoc medium, esto quod sit probabile, tamen non concludit. Major enim, et licet a quibusdam negetur ponentibus idem posse esse in diversis locis, concedatur quoniam nolo,[x] ut quidam aestimant, per principia ita disconvenientia sensui procedere; sed minor negatur quia ad probandum albedinem quae apparet in duobus ovis in diversis locis, non posset adduci medium visus defigendo aspectum suum ad diversa ubi videt albedinem; ergo: albedo est in diversis locis, non valet quia pone ante vel circa te plura specula ad diversa ubi, secundum doctrinam communem si defingas aspectum tuum ad unum ubi, videbis te et nihil aliud formaliter inhaerens speculo. Similiter si aspicias ad aliud ubi, videbis te et sic aspiciendo ad diversa ubi videbis aliquid quod non erit in diversis locis numero; et sic in proposito diceretur ponendo quod hic inferius non est nisi materiale et quod actiones rerum reducuntur in principia separata quemadmodum ponebat Plato;[62] puta actio albedinis hujus in albedinem separatam; dico tali modo separationis qualis attribuitur intelligentiis et etiam intellectui possibili secundum Commentatorem,[63] et tunc non est illud materiale ad quod aspicitur nisi ut speculum, ita quod ad illud ubi defingendo aspectum nata est albedo videri et iste est intellectus Platonis. Uterque istorum modorum trium possibilis est, nec video quod ab Aristotele sufficienter fuerit aliquis eorum reprobatus; primum tamen pro nunc eligo.

Ratio vero posita secundum primum intellectum, qui probabilior electus est, non se extendit / ad motum, si sit res distincta a mobili, quoniam non est 6^{v} segregabilis secundum talia atomalia quorum esse sit in permanentia quemadmodum contingit in aliis entibus naturalibus. An autem motus a mobili distinguatur et etiam de respectibus ante finem totius tractatus inquiretur;[64] nam si non distinguantur, quaerere de eis sollicitarie non oportet; etiam de actibus animae nostrae videbitur ad partem.[65]

Sic ergo in rebus naturae non est nisi motus localis; sed quando ad talem motum sequitur congregatio corporum naturalium quae colliguntur ad invicem et sortiuntur naturam unius suppositi dicitur generatio; quando segregantur, dicitur corruptio, et quando per motum localem corpora atomalia ⟨*conjunguntur*⟩ cum aliquo supposito quae sunt talia, quod nec adventus ipsorum fieri videtur ad motum suppositi, nec ad illud quod dicitur operatio naturalis ejus, tunc dicitur alteratio.[66] Et forsan sicut adamas ferrum, ita est ibi unum quod connectit et retinet in tali colligatione ipsa indivisibilia, et secundum hoc quod est majoris vigoris magis durat illud suppositum in ratione suppositi; et illud, si sic esset, diceretur quasi principium formale rei.

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[x] Ms. volo?

[62] Cf. *Timaeus*, 52 ff.

[63] Cf. III *de Anima tx. com.* 4, XII *Meta. tx. com.* 44.

[64] Cf. p. 224. Cf. Ockam II *Sent.*, 9, A.

[65] Cf. p. 205; 228.

Quid autem diceretur de lumine quod est in medio? Quid est in nocte? Posset dici quod ipsum lumen nihil aliud est quam quaedam corpora quae nata sunt assequi motum solis seu etiam alicujus alterius corporis luminosi. Si autem dicatur hic in stando quod lumen generatur in instanti, dicendum quod licet videatur generari in instanti quia quasi subito, in tempore tamen est. Unde sonus secundum doctrinam communem multiplicat se in medio successive quia cum quodam motu locali videtur tamen fieri quasi subito.[67] Sic quoque non est difficile imaginari quod[y] aliqua sint corpora subtiliora et magis penetrantia quae quasi subito videntur se diffundere per totum medium et praecipue consideratis aliquibus de motu et quiete quae dicetur cum de ipso tractabitur.[68]

In hoc enim sit finis primi capituli quod, si homo bene natus respiciat, non ductus aliquo motu male distrahente, dicet quod homines hujus temporis non possunt dicere sub certo se scire quod aliqua res transiverit de esse ad non esse. Et ex istis videtur quod si alterum habet ponere intellectus meus, debet ponere res esse aeternas, praecipue permanentes; nam si in unoquoque est melior aeternitas quam ejus corruptio, sic videbitur universum magis perfectum si ponantur aeternae suae partes, praecipue permanentes, sicut et suum esse aeternum conceditur, quia si motus distinguatur a mobili secundum intellectum communem, forsan oportet dicere quod sua perfectio magis est in negatione permanentiae sicut et suum esse, ut arguatur sic: illud est ponendum in universo ex quo apparet major perfectio in universo, si ad positionem illius nulla sequitur impossibilitas; sed sic est quod ad positionem hujus quod res naturales permanentes, de quibus dictum est supra, sint aeternae, apparet major in universo perfectio; nec ex hoc sequitur impossibilitas aliqua;[z] quare etc. Major nota quod non est existimandum quod aliqua perfectio possibilis desit in universo quia qua ratione una, eadem et duae et tres et infinitae infinities, et ita non esset terminus, nec circa mensuram[a] mensurandi veritates divinas. Minor etiam vera apparet per praedicta.

Amplius ad hanc conclusionem arguitur sic: illo modo debent dici res corrumpi qui modus est convenientior naturae rei; si bene inspiciatur nota est ex terminis; modo autem si bene aspiciatur in desitione rerum naturalium permanentium non fit totalis adnihilatio alicujus entis permanentis, sed fit abstractio seu segregatio corporum parvorum vel etiam recessus corporum prius inexistentium et per adventum aliorum; respice in lignis quae comburuntur; in candela etiam ardente videbisque quod continue fit quidam recessus corporum. Unde et mors ut dicit Aristoteles in *libro de Morte*[69] uno modo contingit homini per hoc quod calidum continentis attrahit calidum quod erat intra; unde in illis quae putrefiunt resolvitur calidum naturale. Et breviter inducendo in similibus non apparet quod alio modo fiat corruptio in rebus quam per recessum corporum, et si in aliquo appareat aliter fieri propter subtilitatem corporum recedentium, non propter est negandum. Unde etiam secundum Aristotelem in 1 *Meteor.*[70] ab aqua et terra continue elevantur corpora ex quibus fiunt impressiones in aëre; et ideo cum lacus fuerit desiccatus,[b] non est aestimandum quod ad non esse transeat, sed solum fit segregatio et elevatio corporum inexistentium.

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[y] Ms. pro.

[z] Ms. aliquae.

[a] Ms. mensura.

[66] Cf. Lappe, p. 38*.

[67] Cf. *ibid.*

[68] Cf. p. 223.

[69] Cf. 469 b 17.

Adhuc autem sic: omne totum perfectissimum per inclusionem omnis perfectionis et per exclusionem omnis imperfectionis in quo nulla est deformitas debet habere omnes suas partes, praecipue ubi natura rei patitur, maximas; universum est hujusmodi; quare etc.[71] Major patet quia si in deformitatem civitatis videtur redundare ruina contingens circa domum aliquam illius civitatis, multo magis in toto universo existimandum quod deformitas circa partem contingens redundat in deformitatem totius. Minor vero videtur nota, videlicet quod ipsum universum est perfectum, etiam secundum Aristotelem,[72] per inclusionem omnis perfectionis et per exclusionem omnis imperfectionis. Unde esto quod aliquid in universo possit dici imperfectum aliqualiter comparando ipsum ad aliquid aliud universi quod est perfectius, verum est tamen quod nihil est in universo quod sit simpliciter imperfectum quin sit melius ipsum non esse; nam oportet constituere in universo bonum pro mensura cum habeat rationem finis. Unde quare hoc plus est hoc quam suum oppositum non reddes causam quia melius est hoc esse quam suum oppositum, et sic in aliis. Huic rationi illi qui delectantur in quaerendis evasionibus contra illud quod videtur verius secundum apparentia naturalia responderent primo sic, ut dicerent quod species sunt de perfectione universi et non individua,[73] et illae bene perpetuo remanent. Contra: quaero quid tu intelligas per species; aut conceptus universales, et tunc non videntur magis de perfectione universi quam naturae rerum extra; vel intelligis per speciem aliquid unum omnino de se realiter inexistens omnibus individuis ipsius speciei quod videtur probabilius sicut dicerent illi qui ponunt quod natura specifica sit realiter ⟨*in*⟩ individuis omnino una de se, ita quod non distinguatur in eis nisi per differentias individuales superadditas, et ita solum extrinsece distinguitur. Nunc quaero propter quid ponis in duabus albedinibus principia aliqua distinctiva / superaddita 7^{r} illi naturae quae est omnino una de se. Non irrationabiliter videor petere hoc; nam omnino uniuntur apud sensum et in prima ejus comprehensione apud intellectum, ita quod intellectus non distingueret nisi esset diversitas situs; nunc autem secundum hoc medium situs non concluderet utpote arguendo sic: impossibile est unum idem numero in diversis locis etc.; non concludit quia secundum sic loquentes natura specifica quae est omnino una de se est in pluribus locis; si hoc possint sustinere, aeque poterit sustineri contra eos de uno in numero quia sicut istud est omnino unum in se, sic et illud. Medium etiam de generatione et corruptione non concluderet apud eos dicentes quod quando haec albedo corrumpitur, albedo simpliciter non corrumpitur nisi extrinsece, sed solum discommunicatur et ita diceretur etiam si omnino indistinguerentur.

Ad rationem tamen suprapositam posset dari alia responsio quae videtur probabilis, ut diceretur quod haec res est de perfectione universi et contingenter sic intelligendo quod in natura sunt possibiles produci perfectiones omnino aequales isti, et ideo quando ista corrumpetur alia substituetur. Occurrit ista responsio ut improbabilis propter unum; primo quia talis substitutio videtur sonare imperfectionem quamdam; quod verum est, nec hoc negant auctores adversariorum sed de plano confitentur. Commentator Averroes in 2 *de Anima* [74] dicit quod sollicitudo divina vidit individuum non posse permanere in identitate numerali; miserta est ejus ut saltem largiretur ei virtutem per quam posset permanere in identitate specifica. Et secundum istum intellectum arguatur sic: causa quae ponit suum effectum una causatione, quantum sufficit ad naturam totius, est perfectior quam illa quae non ponit, vel si ponat, hoc est pluribus causationibus. Sed secundum hoc Deus non poneret causatum in genere causae finalis una causatione quantum sufficeret, nec causae efficientis, nisi pluribus causationibus; ergo nec illa perfectissime causaret in genere causae finalis nec efficientis. Unde melius videtur praecipue ex quo non apparet impossibile ponere unum causatum maximum quam ponere tot substitutiones. Nec etiam potes dicere secundum hoc ut videtur quod corruptio hujus rei sit causata finaliter et nullo modo per consequens efficienter, ex quo enim per necessitatem loco hujus oportet aliam substituere aequalem in perfectione, melius esset, saltem bonum, ut videtur, istam rem per tempus sequens durare.

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[b] Ms. desiccatura.

[70] Cf. 346 b 16 ff.

[71] Cf. Lappe, p. 38*.

[72] Cf. 207 a 7 ff.: I *de Coel. tx. com.* 2.

[73] Cf. St. Thos. *Contra Gent.* III, 59.

Et si istae rationes non reperirentur omnino concludere, tamen probabilis est positio et probabilior rationibus conclusionis oppositae. Si enim habeant rationes qui tenent conclusiones oppositas, dicant eas et faciant super his comparationem amatores veritatis et credo quod cuilibet non magis affectato ad unam partem quam ad aliam apparebit gradus probabilitatis excedens in his rationibus. Sic loquor quia in libris aliorum ad conclusiones occultas paucas vidi rationes ad quas nescirem probabiles dare responsiones, et si dicant quod ego nego principia per se nota, mirabile est qualiter sic falsa notorie exprimunt, quae non nisi mentiendo dicere possunt.[75] Numquid etiam sufficienter ostensum est supra quod succedente nigredine dicere quod albedo non sit nec est principium notum ex terminis, nec est aliquid quod primo experiamur in nobis? Item mirabile est qualiter reputant illa esse principia per se nota in quorum oppositis quasi concordaverunt omnes qui Aristotelem praecesserunt, saltem sollemniores. Occasione tamen hujus faciam infra capitulum unum de propositione per se nota. Amplius philosophantes non admittant eos in talibus verbositatibus quibus clipeisant[c] illi, qui nesciunt resistere veritati.

Item adduco unam rationem [76] quae videtur probabilis, nescio tamen factam[d] supra; deinde illud quod positum est in primo prologo cum uno signo;[e] deinde hoc: et si istae usque item adduco,[77] et post ista: has igitur rationes.[78] Sub quali valore recipientur? Illud quod appetit omnis homo naturaliter et quo non habito non quiescit, immo habet quasi quamdam displicentiam super suo esse, est; sed aeternitatem sui quilibet homo appetit; ergo etc. Major videtur nota quia talis appetitus universalis in natura ⟨*non*⟩ videtur frustra, aliter videretur ordinatio inconveniens[f] universi quod sic esset universalis appetitus ad illud quod numquam inerit. Minor experitur in nobis. Desiderat enim omnis homo aeternitatem sui et in eam naturaliter tendit; unde circumscribe omnem legem positivam et propone communitati hominum quod ipsi desinent esse ad modum equorum de quibus aestimant quod simpliciter desinunt naturaliter, tristabuntur et videbitur eis quod non sit nisi ludus baterellorum, modo est modo non est, *or i est, or n'i est une.*

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[c] Ms. clipei sāt.

[d] Ms. factum.

[e] Sign omitted.

[f] Ms. conveniens.

[74] II *de Anima tx. com.* 34.

[75] Cf. Lappe, p. 39*.

[76] Cf. p. 193.

[77] Cf. l. 35.

[78] Cf. p. 204.

Has igitur rationes induxi ut probabiles ad conclusionem; certum est quod conclusio haec non potest probari per explicationem conceptuum terminorum conclusionis, quae media dicuntur causae formales, ita quod sciens per talia dicitur scire per causam formalem; et explices quantumcumque vis, de conceptibus explicitis non concludes affirmativam nec negativam. Ergo in hujus rei consideratione oportuit me recurrere ad causam finalem et ostendere quod melius est dicere res aeternas et quod perfectio major attribuitur sic dicendo universo, et cum illud non sit impossibile dicendum est, saltem ei magis assentiendum quam opposito.

Ista sunt sic dicta secundum apparentia naturalia quibus nunc participamus; scio vero quod veritas est et fides Catholica hoc tenet quod non omnes res sunt aeternae nec huic rei videor contradicere quia solum dico quod ista conclusio secundum apparentia naturalia quibus nunc participamus est probabilior opposita. Ex hac siquidem conclusione possunt concludi de dictis Aristotelis in diversis locis esse falsa, et interdum in quibusdam est solum fictio. Non enim habent locum nec sunt vera quae dicta sunt ab eo de materia prima quia fundamentum in illa inquisitione est quod res transeunt de esse ⟨*ad*⟩ non esse et e converso. Et videte quod nullo modo Aristoteles removit causam dubitandi antiquorum; non videbant quod esset aliquo modo necessarium dicere aliquid generari sic quod acciperet esse post non esse, nec corrumpi sic quod acciperet non esse post esse quia, quando aliquid dicitur corrumpi secundum eos, videtur quidam recessus corporum atomalium; quando generatur accessus etiam aliorum, et ideo dicebant quod nihil corrumpitur in non ens nec aliquid generatur ex non ente ut in 1 *Phys.*[79] et 1 *De Gen.*[80] / recitatur.[g] Illud 7^{v}
autem nullo modo per Aristotelem remotum est; difficile nimirum erat eis imaginari qualiter aliquid, quod prius nullo modo habuisset esse, posset in esse, et hic dicit Aristoteles, licet non sit ens in actu, est tamen ens in potentia in materia prima. Esto quod sic ponendo appareat receptivum illius formae si producatur, propter hoc tamen non apparet qualiter possit esse ens illud quod nullo modo erat prius ens. Item multa quae dicit de generatione sublata sunt. Item illud quod dicit: ad substantiam non est motus sed ad alia,[81] similiter remotum est per praedicta quia secundum quod dictum est supra [82] solum est motus localis, licet diversas sortiatur denominationes.[83]

Item secundum dicta apparet de multis sermonibus qui fuerunt inintelligibiles[h] quid dicendum sit. Proponebatur quod accidens inhaeret subjecto [84] nec apparet modus inhaerentiae quia non sicut pellis inhaeret ossibus poterat poni, et circa hoc contingebant multae difficultates ut an inhaerentia sit de substantia accidentis. Secundum praedicta diceretur quod talia accidentia non sunt nisi quaedam corpora atomalia, nec sunt in supposito nisi sicut pars in toto; verumtamen intelligendum quod est quaedam pars essentialis et necessaria toti; et istae magis possunt dici de substantia suppositi. Et ista sunt atomalia quibus abeuntibus non apparet amplius illud quod dicitur operatio rei, nec motus qui prius appareret in re; alia sunt quibus abeuntibus non abeunt; ista magis debent dici accidentalia suppositi; sic tamen sunt sicut pars in toto. Item apparet quod illa scrupulositas, an forma sit tota quidditas compositi, aut materia,[85] amplius non habet locum; nec illa, an forma sit per se et primo terminus generationis.[86] Item apparet de multis propositionibus quibus aliqui sunt usi longo tempore ut maximis quod falsae sunt vel non habent locum ut haec: omnis forma in materia est corruptibilis,[87] nisi velis appellare materiam atomalia fluxibilia ex quibus non componitur corpus caeleste et sic est perpetuum. Item cessat illa briga de privatione,[88] utrum sit per se principium rerum naturalium. Item illa de composito, utrum distinguatur a materia et forma simul sumptis. Item illa de potentiis materiae, an sint infinitae in ea,[89] et breviter valde multae difficultates, immo impossibiles solvi, fundamenta Aristotelis tenentibus contingunt, de quibus non habebunt curare illi qui non ponent illud fundamentum de corruptione rerum supra quod se fundavit Aristoteles, et ex omnibus difficultatibus contingentibus eis possent formari argumenta contra eos.

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[g] Ms. recǎ.

[h] Ms. intelligibiles.

[79] Cf. 187 a 31–37.

[80] Cf. 317 a 32.

[81] Cf. 225 b 10.

[82] Cf. p. 200.

[83] Ms. hic vide *in margin.*

[84] Cf. VII *Meta. tx. com.* 18: IV *De Coelo tx. com.* 35.

[85] Cf. II *Phys. tx. com.* 31.

[86] Cf. I *Phys. tx. com.* 64, 67, 71, 75, 79.

Item secundum dicta faciliter potest apparere qualiter posset dici, si corpora caelestia quorum motibus ista inferiora assequuntur aliquando revertantur ad eundum situm in quo nunc sunt.[90] Dici potest quod idem suppositum, quod nunc est, aliquando erit; nam secundum positam conclusionem omnia corpora atomalia ex quibus res componuntur remanent, et ita congregatione facta, idem erit suppositum in numero quod erat prius. Si autem quaeratur de illis atomalibus, an sint unius rationis vel alterius, dicendum quod alterius; sed ex quibus probetur diversitas rationum inferius forsitan apparebit.

Quid de actibus animae nostrae dicendum? Certe modicam notitiam habemus in tantum quod nullum est quaesitum de eis quod possit terminari inter doctores. Unde definitionem quae deberet esse medium in praedicta demonstrando non habemus certam, ut puta, quid sit cognitio. Possumus tamen dicere quod potest sustineri probabiliter et est probabile quod actus animae nostrae sunt aeterni recapitulando aliqua prius[1] dictorum supra:[91] omne totum perfectum requirit suas partes esse sicut suo modo in istis materialibus in quibus nihil est novum, saltem de entibus absolutis permanentibus; est tamen ista res aliquando praesens alicui cui prius non erat praesens per motum localem; sic ibi scilicet in anima nostra per motum spiritualem. Et redditur ista res intelligibilis cum considerantur aliqua circa sensus quae confitentur adversarii, scilicet illud quod species multiplicant se usque ad organum per totum medium. Intellige igitur hoc et intelliges positum vel satis eris praeparatus ad intelligendum.

Et si vera sit haec conclusio, cessabit liber tertius Aristotelis *de Anima*[92] quasi in toto sui circa quem contingunt difficultates insolubiles ex quibus omnibus posset argui contra sic ponentes. Recessit etiam briga de intellectu agente et intellectu possibili.[93] Remanebunt adhuc circa haec considerationes multae velut an multa quae appellantur intelligibilia in actu veniant simul ad animam. Et considerare oportet etiam consecutionem unius intelligibilis ad aliud et distinctionem quae est inter ipsa et habitudinem quam habent ad objecta. Sciendum tamen quod aliquando fit congregatio talium entium atomalium spiritualium disconveniens, aliquando conveniens, et sicut in rebus materialibus extra, propter disconvenientiam ⟨*et convenientiam*⟩ in congregatione dicuntur interdum monstra interdum bene composita, sic et in anima propter congregationem disconvenientem dicitur . . . seu compositio falsa; propter convenientiam vera cum est modo convenienti ei quod est extra in re.

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[1] Ms. $\overline{\text{pns}}$?

[87] Cf. IV *Phys. tx. com.* 18.

[88] Cf. II *De Anima tx. com.* 7.

[89] Cf. IX *Meta. tx. com.* 11.

[90] Cf. Lappe, p. 39*: Ms. nota hic etiam *in margin.*

[91] Cf. p. 202.

[92] Cf. Lappe, p. 39*.

[93] Cf. III *De Anima tx. com.* 20.

Et etiam consideranda differentia inter haec: cognitio, compositio, judicium, assensus, velle, nolle et sic de aliis. An etiam sit [j] distinctio inter conceptum et apparitionem rei. Necnon et qualiter sumetur numerus illorum entium quae dicuntur actus intelligendi; utrum secundum rationes proprias specierum vel secundum numerum suppositorum. Quae quidem omnia per suprascripta nondum declarantur.

Ad propositum redeuntes posset dici quod intellectio quae nunc est praesens mihi post erit praesens alii supposito, et sic semper.[94] Et videte prout in juventute cum primo audivi librum tertium *de Anima* occurrit mihi, supposita opinione Commentatoris de intellectu, scilicet quod sit unus in numero in omnibus hominibus,[95] facile est substituere quod intelligere potest dici esse aeternum quia secundum eum, licet unus sit intellectus respectu Socratis et Platonis, tamen non semper Socrates intelligit quando Plato, et licet intellectio sit ⟨*in*⟩ intellectu qui suus est, sed tunc intelligit cum est, et dependet a phantasmate. Nunc quoque dicam quod Socrates intelligit illa intellectione quae est perpetuo ⟨*in*⟩ intellectu possibili quando est conformis actualiter phantasmati actu existenti in cogitativa, et tunc argueretur sic: si intelligere poneretur esse corruptibile, hoc esset pro tanto quod homo quandoque intelligit et quandoque non; sed istud non obstat quia et licet intellectio sit in intellectu, non tamen intelligit quia non est conformis phantasmati suo.

Nunc autem si esset terminatum problema de motu et esset ostensum quod motus non distinguitur / a mobili quantum est de eo quod est extra intellectum, 8^r et quod respectus non distinguuntur ab extremis, tunc posset universaliter concludi quod probabile est quod omnes res sunt aeternae; sed haec volo differre prius tractando de indivisibilibus quia aliqua de illis quae dicentur nos in quaestionem de motu praeparabunt.

De Indivisibilibus

BONUM autem videtur in indivisibilium perscrutatione sic procedere: primo ponatur Aristotelis conclusio cum ejus rationibus, eas juxtaponere [k] dissolvendo deinde rationes judicio meo satis probabiliter oppositum concludentes. Est ergo aristotelica conclusio [96] quod continuum non componitur ex indivisibilibus, immo quodlibet quantumcumque parvum, etiam illud quod indivisibile secundum sensum est divisibile in infinitum et in infinitum contingit dare minus ipso. Quod quidem probatur per unam rationem inter ceteras quae fuit longo tempore dicta Achilles,[97] et de qua dixit unus sollemnis doctor de Vico Straminum quod, si Aristoteles non fuisset, numquam extitisset inventa. Propter cujus deductionem accipiuntur duo mobilia quorum unum excedit aliud in velocitate in parte dimidia; tunc secundum descriptionem velocis quae est quod velocius est illud quod in aequali tempore majus pertransit spatium vel aequale in tempore minori; illud mobile velocius in duplo movebitur in aequali tempore per duplex spatium. Ponatur ergo quod moveatur per aliquod spatium in tribus instantibus per adversarium, contra quem arguitur sic: sicut linea componitur ex punctis, sic tempus ex instantibus; moveatur ergo per spatium *a b c*. Tunc quaeritur: cum mobile velox et tardum inceperint [l] simul motum suum movendo per *a b c*, et velox finivit motum suum per illa tria instantia, ad quid pervenit mobile tardum? Primo namque non ad *a* quia tunc non solum superaretur in duplo a veloci quod ponebatur, nec in *c* quia tunc esset aequalis motus cum veloci; si in *b* ita quod finierit motum suum per *a b*, tunc non excedetur a veloci in media parte; ergo relinquitur quod necessario concedendum est quod sit in *a* et dimidio ipsius *b*; ergo *b*, quod ponebatur indivisibile, erit divisibile.

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[j] Ms. sint.

[k] Ms. iuxtaposse.

[l] Ms. īce*p*|||||t?

[94] Cf. Lappe, p. 39*.

[95] Cf. III *de Anima tx. com.* 5, VI, 165^r, l. 56.

[96] Cf. 231 a 23 ff.

[97] Cf. 239 b 14.

Dico tamen, salvo honore Aristotelis, quod haec ratio non concludit. Ad cujus dissolutionem juxta opinionem quae ponit lineam componi ex punctis et tempus ex instantibus, qualiter attendenda sit velocitas unius mobilis supra aliud? Et dico primo istam negativam quod non est accipienda per hoc quod est attingere terminum cum deseritur terminus a quo; et non loquor hic de terminis finalibus quia ex quo spatium *a b c* componitur ex indivisibilibus inter quae non est medium, statim cum mobile deserit *a* est sub *b* et sic semper. Secundo dico istam affirmativam quod unum mobile est velocius altero quia unum quiescit, aliud non; mobile quidem velocissimum est illud quod sic movetur quod nullo modo quiescit, sicut est, ut puto, mobile primum; alia vero mobilia quodammodo quiescunt secundum quod sunt magis tarda et minus tarda.

Ad rationem igitur si mobile velocissimum movetur per spatium *a b c* compositum ex tribus indivisibilibus per tria instantia, pertransivit ipsum sic movendo quod non quiescit. Pone ergo quod mobile quod est tardius in duplo moveatur per illud spatium; dico quod in uno instanti attinget *a* et per aliud instans quiescet in *a*; similiter in uno instanti attinget *b* et in eo quiescet per unum instans, et sic de *c*, et ita pertranseundo illud spatium ponet sex instantia, tria motus et tria quietis. Quando ergo quaeris: cum mobile velocius in duplo attingerit totum spatium, tardum erit in medio spatii in eodem tempore? Dicendum est quod si intelligas de medietate spatii materialiter sumpta, falsum est; sed si de formali, facta relatione ad mobile, verum est; verbi gratia in proposito dico quod in illo tempore in quo velox mobile praedictorum attinxit *c*, mobile tardum attinxit *b*, sed non eo modo quo mobile velox est in *b* quia velox sic pervenit ad *b* quod ibi solum fuit per unum instans; mobile vero tardum est ibi per duo instantia, saltem si ultra deberet procedere, et sic est medietas quantum ad ipsum mobile quia posuit tria instantia et tria poneret si pertransire deberet totum spatium *a b c;* nam cum mobile velocius perfecit motum suum *a b c*, tardum attinxit *a* in uno instanti, in secundo quievit ibi, et in tertio attinxit *b*, et si ultra procederet, per unum instans quiesceret in *b*, in uno instanti attingeret *c* et ibi per instans unum remaneret. Sic ergo sex instantia ponet totum spatium pertranseundo et tria per medietatem movendo, quae quidem medietas magis circa tempus quam circa spatium materialiter sumptum attenditur. Quapropter et mobile in duplo velocius est illud quod movetur per aequale spatium in tempore minori in dimidio.

Alia quidem ratio Aristotelis [98] est, cujus virtus sequitur: si continuum componeretur ex punctis, aut puncta se tangerent, aut non; si non, tunc ex eis numquam fieret continuum neque contiguum; si sic, aut ergo totum punctum tangit totum, vel pars partem. Non pars partem quia tunc essent divisibilia quod in primis negabatur; si totum tangit totum, tunc non reddit ipsum majus quod est contra positum. Ad hoc autem posset sic responderi: totum tangere totum uno ⟨*modo*⟩ potest intelligi, id est, quolibet sui, ita quod nihil ipsius mediate se habeat ad aliud, sed totum ipsum se habet immediate totum ad ipsum. Et iste tactus non est possibilis in corporibus quia semper secundum partes remotas unum corpus se habet mediate ad aliud et se non tangunt nisi mediantibus partibus propinquis; isto modo ad differentiam corporum potest dici quod punctus se toto alium tangit secundum modum positum. Alio modo posset quis intelligere, licet forsan intellectus iste non habeatur de virtute sermonis, quod totum, id est unum non est extra aliud; et istum intellectum nego. Isto enim secundo modo totum tangens totum ipsum non faceret majus, sed primo modo reddet ipsum majus. Unde punctus habet propriam situalitatem et proprium modum essendi, et ideo si approximarentur puncta, remanentibus situalitatibus propriis, adhuc est inintelligibile [m] quod non facient majus.

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[98] Cf. 231 a 29 ff.

Et ⟨*ex*⟩ quibusdam aliis fit ratio quaedam; ex non quanto fieret quantum si ex punctis continuum componeretur, quia continuum quantum est; punctum vero non est quantum. Aut ergo per quantum intelligis / ipsum compositum 8^{v}
seu ipsam extensionem, et sic punctum non est quantum; tamen secundum istum intellectum: ex non quanto potest fieri quantum quemadmodum ex non compositis compositum; vel per quantum intelligis habens propriam situalitatem et esse circumscriptive, et sic concedo quod punctum potest dici quantum, et tunc non poteris secundum hoc concludere ex non quanto fieri quantum.

Mirabile rursum est qualiter in ratione praecedenti immediate [n] Aristoteles accepit quod probandum erat pro principio per se noto; dicebant namque adversarii quod indivisibile additum indivisibili facit majus, sicut linea major est ex tribus punctis quam ex duobis, et oppositum hujus accepit Aristoteles pro principio, et videtur quod ipsam taliter non debuisset accepisse nisi eam clarius resolvisset.

Algazel [o] autem ⟨*ad*⟩ Aristotelis propositum quasdam rationes adducit;[99] una est: accipiatur rota molendini quae movetur, et circa ejus centrum imaginetur quidam parvus circulus et modicus ex punctis quattuor compositus; circumferentia vero molendini seu magni circuli contineat centum puncta et ponatur continue moveri. Quaero igitur: quando circumferentia superior pertransit unum punctum, quid circulus parvus pertransit? Quia si punctum, ergo aequaliter movetur cum circumferentia, quod est falsum quia pertransiret centum puncta ubi parvus circulus tantum pertransiret quattuor. Si autem quiescat, non est dicendum, quia tunc esset discontinuatio in partibus, et partes corrumpentur.

Juxta posita dicendum est quod si in parvo circulo sint tantum quattuor puncta, in magna circumferentia erunt tantum quattuor puncta a quibus protractae lineae directe terminarentur ad illa parvi circuli puncta quattuor; ab aliis vero lineae punctis protractae invicem inciderent antequam ad centrum pervenirent. Quando igitur fiet motus secundum ista puncta non movebitur parvus circulus, sed quiescet; sed quando fiet motus secundum illum punctum a quo linea protracta directe terminatur ad punctum parvi circuli, tunc fit motus secundum illum punctum parvi circuli, et si tunc non fieret, oporteret quod illa linea divideretur. Si aliquo modo non fiat motus secundum punctum aliquem parvi circuli, propter hoc non oportet quod linea corrumpatur.

Arguit idem ex alio sic: si linea componeretur ex punctis, sequeretur quod non omnis linea posset dividi in duas partes aequales sicut linea punctorum disparium ut trium aut quinque. Et si dividenti ponitur unus cedere punctus, omnis linea punctorum imparium in duas medietates pro libito dividetur; nulla vero parium punctorum linea hujusmodi secationem patietur, quod inconveniens nondum reputemus; et licet cujuslibet lineae videantur duae [majores] partes aequales, hoc pro tanto est quia vel aequales sicut in linea disparium vel una medietas est altera solo puncto major, quare propter puncti parvitatem aequales indicantur.

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[m] Ms. intelligibile. [n] Ms. ime$^{t\bar{a}}$. [o] Ms. Agazel.

[99] Cf. *Meta.* I, 1, 2; J. T. Muckle, *The Metaphysics of Algazel* (Toronto 1933), p. 13.

Nunc autem inducere sequitur aliquas pro [p] intenta conclusione rationes. Primo quidem magis dubitando; secundo magis dando intellectum quaesiti. In quocumque igitur sunt infinitae partes alicujus quantitatis, illud est infinitum extensive quia cum quaelibet pars sit extensio quaedam, et sunt infinitae, inintelligibile est quin sit extensio infinita; hoc autem continuum; atomus qui videtur in radio solis est hujusmodi. Ad hoc a quibusdam respondetur: vera est major si illae partes non se habeant per modum continentis et contenti et quaelibet sit extra quamlibet; sic autem non est hic quia istae partes non sint quaelibet extra aliam. Contra hoc arguitur: in illo continuo sunt aliquae partes quarum una est extra aliam; aut ergo multitudo talium partium est sub certo numero, aut infinita; si sub certo numero, tunc non poterit dici nisi resolvatur illud continuum in indivisibilia, quia si dicas quod super quattuor tales partes, cum quaelibet divisibilis sit in duas partes quarum una est extra aliam, aut erit devenire ad indivisibile, aut erunt infinitae, et sic illa multitudo talium partium erint infinita et sic habetur propositum. Si autem diceretur quod major supradicta vera est, supposito quod illa multitudo sit partium alicujus unius quantitatis determinatae, non obstat quia ad extensionem infinitam sufficere videtur infinita multitudo partium quarum una est totaliter extra aliam.

Amplius ad idem sic arguitur, supponendo quod hypothesis impossibilis numquam immutat naturam quaesiti nisi immutet naturam subjecti, et in ordine ad praedicatum, quia remanente subjecto totaliter invariato, cum in ipso sit causa inhaerentiae praedicati ad subjectum ipsum non immutatur quaesitum. Tunc sic: tantum est nunc continuum quantum esset constitutum ex ejus partibus, si per impossibile aliquod agens ab aeterno illud divisisset; nota est haec per suppositum; non illud agens largitum fuisset aliquid illi continuo, sed solum aliud divisisset. Modo autem si continuum aliquod agens ab aeterno divisisset per impossibile et ex illis partibus aliquod continuum constituisset, cum illae partes per te sint infinitae, et illud constitutum esset [q] infinitae extensionis.

Rursus praemisso quod, cum quis vult convenienter arguere ad aliquod quaesitum, debet prius in [r] se formare conceptus terminorum conclusionis, et tunc ⟨*vide*⟩ an ab his possis abstrahere conceptum continentem notitiam conclusionis, et interdum respicere ad aliqua quaesito propria, et quanto ex propinquioribus quaesito conceptus formabis, tanto convenientior erit ratio; et interdum debes respicere ad opposita subjecti et praedicati et ad multa talia ut met habes ab Aristotele in 1 *Priorum*.[100] Et si bene adverteres, tu scires de multis rationibus quae interdum subtiles reputantur propter hoc quod magnae sunt abstractionis, et tamen sunt omnino logicae et extraneae respectu quaesiti, ita quod non sunt natae facere scientiam de quaesito.

Formemus igitur conceptus circa quaesitum et videamus qualiter veniunt ad intellectum; venit quidem ex parte subjecti conceptus de continuo qui [s] est communis pro ipso et pro contiguo, videlicet habere partes inter quas non est medium, et iste venit ad intellectum mediante visu vel tactu. Alius est conceptus proprius continuo et est a posteriori, qui venit ad intellectum per motum:/ quando uno moto necessario movetur alterum, et ideo dicitur: illa 9^r sunt continua quorum motus est unus. Conceptus continui finiti extensive sic venit apud intellectum quia videtur aliquid [t] extra illud; vel verius secundum aestimationem Aristotelis,[101] finitum concipio quia in eo est aliqua pars determinata quae aliquotiens sumpta totum redderet. Similiter infinitum extensive venit apud intellectum vel per nihil habere extra se, ut antiqui videntur intellexisse, vel quia in eo non erat accipere aliquam communem mensuram per quam mensuraretur totum. Alius conceptus est circa praedicatum propositionis propositae quod est divisibile, quod quidem est respectus. Nunc autum respectus venit per notitiam extremorum ad intellectum; quare oportet conceptus extremorum inspicere. Divisio siquidem non est aliud nisi separatio alicujus ab aliquo quod erat extra aliud quia, si esset intra, jam non esset divisio; et ita divisioni praecedit naturaliter quod in continuo aliquid sit extra aliud, et divisioni in infinitum praerequiritur quod sit aliquid extra aliud in infinitum.

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[p] Ms. quod. [q] Ms. esse. [r] Ms. iñ. [s] Ms. quae.

[100] Cf. 49 a 11 ff.

Nunc ex istis videtur quod clare possit abstrahi conceptus istius conclusionis quod continuum quodlibet non sit divisibile in semper divisibilia ut arguatur sic: in omni ente quod est divisibile in infinitum est aliquid extra aliud in infinitum; sed continuum est divisibile in infinitum; ergo in eo est aliquid extra aliud in infinitum. Ultra sic: omne illud in quo est aliquid extra aliud in infinitum est infinitum extensive; sed in continuo est aliquid extra aliud in infinitum; ergo continuum est infinitum extensive. Conclusio est falsa; ergo aliqua praemissarum; non major quia inimaginabile est quod in aliquo sit aliquid extra aliud in infinitum et illud non sit infinitum extensive; ergo minor ipsius prosyllogismi est falsa quae erat conclusio primi syllogismi; quare et aliqua earum ex quibus sequebatur; non major ut ex praedictis jam apparet quia huic quod est esse divisibile in infinitum antecedit naturaliter aliquid esse extra aliud in infinitum; relinquitur igitur quod minor primi syllogismi falsa est quae dicit continuum est divisibile in infinitum. Sed forsan diceret quis ad majorem primi syllogismi quod in illo quod est divisibile in infinitum est aliquid extra aliud in infinitum in potentia, sed in actu non; et sic non excluderetur quod continuum sit in infinitum extensive in actu. Contra: certum est quod in isto continuo demonstrato [u] intellectus, immo etiam visus, potest habere actum suum ita circa aliquid continui quod non circa totum; et certum est quod si, eo modo quo inexistunt illa circa quae habet actum suum quando habet actum suum circa aliquid, continuo inexisterent infinita circa quorum quodlibet intellectus habere posset, quantum est ex natura rei, actum suum, esset infinitum extensive. Nunc sic autem,[v] quantum est ex natura rei, illa, circa quae intellectus habet actum suum seu potest habere sic separatim, sunt finita vel infinita; si infinita cum quodlibet illorum sit extensio quaedam et sit extra aliud, sequitur quod continuum est extensivum infinitum; si finita, aut divisibilia, et tunc nihil prohibet ex natura rei quin intellectus possit habere actum suum circa unum et non circa aliud; aut indivisibilia, et tunc propositum.

Item cum dicis: sunt in potentia, verum est ad separari ab invicem, sed non sunt in potentia sic quod non sint in actu; primo quia compositum in actu videtur habere partes in actu sicut compositum in potentia partes in potentia.

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[t] Ms. ad. [u] Ms. d$\overset{a}{e}$to. [v] Ms. a^t.

[101] Cf. 206 a 25 ff.

Item quod dividitur ab alio naturaliter antecedit divisionem ejus ab alio. Item illa sunt in continuo et distincta realiter circa quorum unum potentia sensitiva potest habere actum suum et non circa aliud. Item certum est quod est aliquid nunc in continuo inter quod et aliud potest cadere divisio; vel ergo illa sunt finita et sic habetur propositum quia, si essent divisibilia, adhuc haberent aliquid, et aliquid inter quae posset cadere divisio; si infinita; ergo infinitas extensiva.

Item hoc continuum in actu est majus [w] alio, sed non toto sui; ergo parte sui; ergo ibi est pars et pars in actu. Secundum Aristotelem in 9 *Meta.*,[102] actus est existere rem, non ita sicut dicimus in potentia; dico autem in potentia ut in lapidem Mercurium; modo vero demonstrando aliquid continui et non totum continuum sibi competit [x] ista descriptio. Item quod sicut post divisionem dicuntur habere actualitatem entitativam quod sic ante, quoniam de nullo ente [y] debet affirmare intellectus quod habeat actualitatem entitativam quam non habebat prius, quod non venit ad intellectum secundum aliquem conceptum secundum quem non veniret prius, quia intellectus non attribuit conceptum actualitatis entitativae quem prius non attribuebat nisi quia ipsum venit ad intellectum secundum aliquem conceptum concernentem existentiam secundum quem non veniebat prius; qui est apud ipsum intellectum medium concludendi actualitatem entitativam, verbi gratia, de albedine de qua dicebat prius intellectus quod est in potentia, nunc dicit quod est in actu, quia potentia judicativa, cum considerat dispositionem sub qua erat prius potentia visiva istius suppositi quando respiciebat superficiem et illam sub qua est nunc, sibi attribuit praedicatum actualitatis entitativae, et pro tempore sibi potentialitatem attribuit. Sed nunc sic est quod, divisione continui facta, nullum conceptum habet concernentem existentiam quin haberet prius; unde habet istum conceptum quem prius non habebat: hoc non est nunc cum illo; sed iste non est conceptus existentiae, nec ab isto potest abstrahi quia non sequitur: si prius cum alio; ergo non ens; immo oppositum. Item non apparet qualiter divisio possit esse medium concludendi novum esse.

Rursum ad propositum arguitur sic: haec non est vera: omni magnitudine contingit dare minorem; ergo magnitudo non est divisibilis in infinitum. Consequentia nota est; declaratur antecedens quoniam quantum ablatio alicujus partis reddit totum quod remanet minus, tantum inexistentia ejus reddit ipsum majus; ergo, si minoratio per ablationem posset esse in infinitum, ante omnem minorationem erat infinitas extensiva.

Adducitur etiam ad hanc conclusionem a quibusdam medium quoddam ab eis difficile reputatum. Demonstratum est in geometria quod si corpus sphaericum ponatur super planum, non tanget planum nisi in puncto; accipiunt etiam dictum Aristotelis in 6 *Phys.*: [103] si indivisibile moveatur, prius pertransit sibi aequale quam majus; ponatur igitur illud sphaericum corpus super punctum in quo tangit planum moveri super ipsum planum; manifestum est quod pertransibit totum planum pertranseundo semper sibi aequale, videlicet punctum; ergo planum ipsum componitur ex punctis. Nec sufficit quod quidam dicunt, videlicet quod non est dare duo corpora quorum unum sit omnino sphaericum et aliud omnino planum / 9v et, si esset ipsa dare, dicunt alii quod non fieret motus ut dicebatur. Contra: ponunt isti communiter quod punctus existens in corpore mobili ad motum ipsius mobilis movetur, et si non per se, saltem per accidens. Sumatur igitur virtus rationis praeadductae: sive

[w] Ms. manus.

[x] Ms. competi

[y] Ms. inte.

[102] Cf. 1048 a 31.

[103] Cf. 241 a 6 ff.

ille punctus moveatur per se sive per accidens, necesse est ut prius pertranseat sibi aequale quam majus, et tamen pertransit illud spatium saltem per accidens; ergo sibi aequalia, et sic puncta; quare sequitur quod continuum componitur ex indivisibilibus. Huic quidem conclusioni instant quidam non dialectice solum sed demonstrative ut asserunt dicentes: si continuum componeretur ex indivisibilibus, sequeretur quod diameter esset commensurabilis costae, cujus contrarium demonstratum[z] est in 4 *Euclidis*.[104] Probant consequentiam; quia si diameter esset compositus ex punctis, hoc esset ex punctis in certo numero, et similiter costa, licet diameter ex pluribus quam costa cum sit major; cum ergo omnis numerus mensuretur, isti duo numeri ipsorum diametri et costae tamquam aliquam communem mensuram habentes, unitate mensurantur; etiam omnis numerus minor vel est pars majoris vel partes. Hujus rationis et consimilium, ut puta, illius de rota suprafactae et talium plenam solutionem relinquo quibusdam qui hanc tenent conclusionem de continuo quam posui ut probabilem, quoniam res quae dicuntur imaginationis minus bene veniunt ad spiritum meum quam res intellectus quae dicuntur majoris abstractionis.

Causa exercitii tamen aliquas ponam responsiones utcumque[a] probabiles inconsuetas dari. Primo quidem ad rationem de diametro dicit quidam reverendus magister quod habet meliores rationes ad oppositum illius conclusionis: diameter est incommensurabilis costae, quam Euclides habuit ad propositum suum. Aliter tamen respondeo: adversarii siquidem accipiunt illud pro principio aut alias non valeret eorum ratio, videlicet si diameter compositus esset ex punctis, esset ex certis punctis numero, et sic diameter demonstratus in pariete vel in pulvere. Male autem hoc accipiunt pro principio quia nec est conclusio eorum magistri, nec est notum eam sequi ad conclusionem eorum; nam simul stant: continuum componitur ex punctis, et: continuum signatum in pariete vel alibi componitur ex infinitis punctis; fiat penes sensum vel imaginationem. Dicerent autem contra hoc forsan: si punctum additum puncto faciunt ipsum majus et extensionem quamdam et tres faciunt majus quam duo et sic semper et ibi sint infinita, sequitur quod ibi sit infinita extensio. Item non negatur continuum dividi in semper divisibilia nisi propter extensionem infinitam quae videtur sequi ad praedicta; aut per extensionem infinitam intelligis extensionem sine terminis quam nego, nec sequitur ad arguta nec positum, quoniam talis infinitas hoc exigit quod si aliquod agens, vel aliqua agentia, divisisset ab aeterno, numquam cessaret divisio. Nunc autem concedo quod esto quod quaelibet magnitudo demonstrata ad sensum vel imaginationem componatur ex infinitis punctis, tamen si aliquod agens vel aliqua agentia divisissent ab aeterno, tandem pervenirent ad indivisibilia; vel per extensionem infinitam[b] tu intelligis eam secundum divisionem infinitam in qualibet magnitudine demonstrata ad sensum vel imaginationem.

Et cum dicitur quod propter aliud non negatur continuum esse divisibile in semper divisibilia nisi propter infinitatem extensionis quae videbatur sequi, dicendum quod, esto quod non esset alia ratio super negatione conclusionis adversarii, non obstat quia infinitas extensiva per negationem terminorum omnino videtur sequi ad ejus opinionem. Dicunt enim quod continuum est divisibile in semper divisibilia et quod si infinita agentia ab aeterno divisissent, numquam pervenirent ad indivisibilia, immo nec infinities infinita agentia

[z] Ms. demiri.

[a] Ms. utrumque.

[b] Ms. infinitum.

[104] Cf. *Book* 10; *evidently the scribe has mistaken an X for the arabic* 4

in infinities infinitis temporibus numquam pervenirent. Non autem sic pono divisionem in infinitum ut ex dictis notum est.

Secundum hanc imaginationem potest responderi ad quamdam rationem suprafactam[105] quae multum difficilis reputatur, probans quod, si continuum componeretur ex indivisibilibus, circulus major esset aequalis minori. Imaginetur siquidem circulus unus et circa centrum ejus unus alius parvus circulus; nunc a quolibet puncto lineae circumferentialis ad centrum per aliquem punctum parvi circuli contingit lineam protrahere. Aut etiam sic: a quolibet puncto majoris circuli protrahere contingit lineam ad unum punctum parvi circuli rectam; ergo tot erunt puncta in parvo circulo quot in majori quia, si tot non essent, jam non possent protrahi lineae rectae ut ponebatur. Hic dicendum est quod licet verum sit quod a qualibet parte lineae circumferentialis demonstrabili ad sensum contingit lineam protrahere rectam ad aliquam partem minoris circuli, sed non est verum quod a quolibet puncto circumferentiae possit protrahi linea recta ad aliquem punctum parvi circuli, immo sunt aliqui puncti in circumferentiali linea penes ⟨*quos*⟩ nulla linea attenditur in descendendo versus centrum seu parvum circulum. A quolibet igitur puncto, id est, a quolibet uno quo utimur ut puncto quando describimus circulum[e] in pulvere seu alibi, qui tamen est indivisibilis in infinitum, contingit protrahere lineam rectam ad centrum seu parvum circulum secundum aliquem punctum. Et intelligo quod non a quolibet puncto circumferentiae potest protrahi linea sic quod illa linea attenderetur secundum aliquem punctum in linea immediate se habente directe suppositum, ut hic describo[d] ut videatur, quia forsan sic loquendo non utor terminis geometrae; sed si protrahitur, hoc erit secundum punctum in quem quasi incidet ut hic,[d] et sic secundum duo puncta in circumferentia non attendetur nisi una linea recta descendendo versus parvum circulum seu centrum ut hic;[107] sic quoque semper descendendo, et hoc modo non erunt tot puncta in parvo circulo quot in majori.

Si igitur vera sunt quae in dictis solutionibus dicta sunt, ponerentur duae conclusiones in problemate de compositione continui, videlicet quod continuum non componitur ex semper divisibilibus, et in hoc recederetur ab opinione communi; secundo quod continuum demonstrabile ad sensum vel imaginationem ex punctis finitis non componitur, et in hoc fieret recessus ab opinione omnium eorum qui posuerunt continuum esse compositum ex indivisibilibus. Et secundum ista verae sunt propositiones sicut quod qualibet magnitudine data / seu demonstrata ad sensum vel imaginationem contingit 10r
dare minorem, saltem nihil videtur obstare; et tamen cum hoc verum erit dicere quod in re est aliqua magnitudo qua non est dare minorem.

Si vero quis vellet dicere unum quod supradiximus[108] esse falsum, quod mobile tardum non quiescit, non video evasionem probabiliorem hac ut diceretur: sicut aliquod indivisibile non venit ut ens formatum ad sensum vel imaginationem, sic nec unum indivisibile sollitarie sumptum induit rationem pertransibilis, sed plura simul, et quanto mobile moveretur citius seu velocius, tanto plura erunt in ratione unius pertransibilis apud ipsum, et secundum hoc attenderetur velocitas et tarditas motus; quae omnia consideratione modica non egent.

Ad positionem rursus compositionis continui ex semper divisibilibus habetur quaedam ratio in virtute ab Aristotele in 6 *Phys.*:[109] si continuum componatur

[e] Ms. punctum.

[d] Ms. *figure omitted.*

[107] Ms. Y Y.

[105] Cf. p. 208.

[108] Cf. p. 207.

[109] Cf. 237 a 17 ff.

ex indivisibilibus, sit aliquod indivisibile in *a* et debeat transire per lineam *b c d* compositam[e] ex tribus indivisibilibus; tunc aut simul movetur seu pertransit *b* et habet esse motum quod omnino inintelligibile[f] videtur et impossibile, vel prius movetur et posterius habet esse motum quod non potest esse nisi *b* sit divisibile ut sic dicatur: pertransit partem ipsius *b* et remanet adhuc pars pertranseunda. Propter hujus rationis solutionem oportet videre quid importat hoc nomen "movetur," quid haec oratio: movetur per *a* vel per *b*, et quid haec: pertransit *a* vel *b*, ut sic videatur quando et qualiter hae orationes sint concedendae.

Secundum autem quod videbitur in tractatu de substantia materiali[110] utrum distinguatur a quantitate, hoc verbum "movetur" multas importat complexiones. Pono tamen nunc eas quae sufficiunt ad praesens. Importat enim quod mobile se habet per negationem medii ad aliquid inter quod et ipsum prius erat medium interceptum; secundo quod mobile sic se habente partes unius contradictionis non possunt verificari; et ex his patet quod haec oratio exprimitur vere: aliquid movetur. Verum est dicere: aliquid est acquisitum, et aliquid acquirendum, et qualiter illud "acquiri" sit intelligendum dicetur in praedicto tractatu de substantia materiali etc.[111]

Nunc autem per hanc orationem: mobile movetur ad *b*, importatur primo[h] et ultra connotat quamdam carentiam ipsius *b* et dicit quamdam habitudinem inter mobile et ipsum *b* quae oritur ex hoc quod mobile quod movetur indistinguitur aliquo modo ab ipso *b* per sublationem medii intercepti. Dico ergo quod mobile quod est in *a* quod debet pertransire spatium *b c d* non movetur ad *b* cum non sit in *b* negatio ipsius *b*, nec ante *b* quia tunc non movetur; et sic erit primum in motu cujus oppositum videtur dicere Aristoteles in 6 *Phys.*[112] Sed quando est in *c* movetur ad *d*; "movetur" dico per illa quae importat motus de quibus statim dixi quae concurrunt; nam ab aliquo indistinguitur localiter a quo prius non, et ipso sic se habente, partes unius contradictionis non possunt verificari, praecipue si sit mobile velocissimum; et ad *c* potest quia ibi est carentia indistinctionis ab ipso *c* quam habebat post. Sed numquid erit haec vera in casu posito: mobile pertransit *b*. Si enim hoc importet quod mobile prius non fuit in *b*, est in *b*, et sine medio erit in alio a *b*, tunc et est concedenda; si hoc mobile prius movebatur ad *b*, est in *b* ⟨*et*⟩ nunc[i] remanebit in *b*, neganda est quia prius non movebatur ad *b* ut dictum est.

Et ⟨*ex*⟩ quibus apparet quid ad Aristotelis rationem sit dicendum cum dicitur: vel mobile simul movetur per *b* et habet esse motum in *b* etc. Dico quod nullo modo movetur in *b*, sed bene habet esse mutatum in *b*. Si intelligamus per "mutari" aliter se habere nunc ⟨*et*⟩ prius, nec habet esse motum; si intelligamus per hoc quod est mobile esse in *b* aliquem motum praefuisse; vel sic: mobile prius movebatur in *b* et nunc est in *b*; sed dico quod movetur ad *c* cum est in *b*; nam tunc et non prius sunt verae omnes complexiones quas importat motus.

Aliter autem posset responderi ut diceretur: aut Aristoteles intelligit per "motum" entitatem aliquam successivam divisibilem secundum partes in infinitum, et tale quid nominis negamus existere in rerum natura ut apparebit in sequentibus; aut intelligit per "motum" illud quod diximus per ipsum quod non est "movetur" importari, et secundum istud quid nominis usi sumus supra et secundum ipsum quae diximus salvari possunt omnia quae apparent.

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[e] Ms. compositum.

[f] Ms. intelligibile.

[h] Ms. prima.

[i] Ms. *Before* nunc] est *deleted*.

[110] Cf. p. 222.

[111] Cf. p. 226.

[112] Cf. 236 a 26 ff.

Adducitur alia ratio per Aristotelem[113] de divisibilitate temporis quod tempus sit divisibile in semper divisibilia et per consequens magnitudo quia ista videntur uniformiter se habere ad divisibilitatem et indivisibilitatem. Quod tempus sic se habeat et quod non componatur ex ipsis nunc sic probatur quia non esset motus; probabo quia, si aliquod mobile moveretur in nunc per aliquid, mobile velocius moveretur per illud spatium in minori mensura et per consequens esset dare minus ipso nunc.

Alia ratio confirmatoria[114] quae videtur habere apparentiam est: non contingit quiescere in ipso nunc; ergo nec moveri a simili. Quod non contingat quiescere probatur quia quiescere est se habere similiter nunc et prius; in ipso autem nunc non est prius et posterius quia jam esset divisibile. Respondetur dicendo quod per "moveri," ponatur in motu locali, intelligitur "moveri localiter" quod est alicubi et sine medio fuit alibi et sine medio erit alibi; tale dicimus quod sic se habet vel quantum ad apparentiam nostram, et ideo interdum dicimus moveri aliqua quae non moventur quia non sic sunt alicubi quod sine medio sunt alibi. Sed illud latet nos ut supradixi,[115] et tale mobile quod sic se habet quantum ad veritatem est mobile primum quod movetur motu velocissimo et de tali potest dici quod movetur in ipso nunc. Cum ergo tu arguis: ergo ⟨*velocius*⟩ mobile movebit per illud spatium in minori mensura temporis, dico quod non est dare mobile velocius ipso. Sed dices: quid in alio mobili? Dico quod movetur in nunc; et dices: ergo mobile velocius movebitur in minori tempore; dico quod non, quoniam ut supradixi[116] unum mobile non est velocius altero nisi quia unum movetur continue et aliud quiescit, vel quia unum plus quiescit quam aliud, ita quod, si moveatur per unum instans, quiescet per aliud instans in *a* vel per plura secundum quod erit magis tarde.

Et cum opponitur secundo quod in nunc non contingit mobile quiescere, dico quod falsum est. Ad probationem: quiescere est similiter[j] se habere nunc et prius; concedatur exponendo "prius" ut dicatur: quando aliquod mobile movetur in *a* in aliquo instanti sic quod est in *a* in illo instanti et in instanti immediato est adhuc in *a*, tunc/in isto instanti secundo quiescit quia 10^v similiter se habet nunc et in priori instanti. Et ideo forsan nullum mobile praeter primum debet dici moveri nisi intelligatur per "moveri" illud quod sine medio fuit alibi, sine medio erit alibi, sine medio vel vero vel percepto. Et si inspiciendo veritatem magis non dicatur moveri nec dicetur quiescere. Ibi ergo non esset verum dicere: hoc ens movetur, sed forsan: mutatur de non *a* in *a*. Quod autem statim dixi: nec dicetur quiescere, debet intelligi: nisi fieret relatio ad primum mobile, quod tunc est natum moveri.

Et si ea quae dicta sunt ⟨*sunt*⟩ vera, tolluntur quasi omnes conclusiones 6 *Phys.* de quibus facta est mentio expressa. Etiam tollitur illa conclusio qua dicitur quod omne illud quod movetur est divisibile.[117] Probatur per Aristotelem sic, quoniam illud quod movetur aut est totum in termino a quo vel totum in certo ad quem; si primum, quiescit; si secundum, jam habet mutatum esse et sic[k] non movetur, vel partim in uno et partim in alio, et sic erit divisibile.

Dico quod secundum dicta supra[118] divisio non est sufficiens; nam in casu

[j] Ms. aliter. Cf. 239 a 15.

[k] Ms. sicut.

[113] Cf. 232 a 18 ff.

[114] Cf. 234 a 31 ff.

[115] Cf. p. 214.

[116] Cf. p. 207.

[117] Cf. 234 b 10.

[118] Cf. p. 210 ff.

posito supra, scilicet quod mobile sit in *a* et habeat transferri usque ad *d*, ad *b* non movetur, sed cum est in *b*, ut visum est, tunc potest dici moveri. Nunc secundum ista nec *b* est terminus a quo, immo ipsum *a* in quo cum existebat quiescebat, nec est terminus ad quem motus. Et bene assumpsit Aristoteles illud membrum in 6 *Phys.*,[119] scilicet esse sub neutro membrorum sive terminorum; sed in illa particula illud non improbat.

Similiter alia conclusio Aristotelis [120] vel quasi nulla erit vel totaliter tollitur qua dicitur quod motus est divisibilis ad divisionem partium mobilis quia si per motum intelligit unam rem inhaerentem [l] mobili ut imaginatur communiter, nulla talis est ut dicetur infra [121] in tractatu de substantia materiali etc. Si autem intelligat per illam propositionem: motus dividitur ad divisionem partium mobilis, hanc propositionem: mobile quod movetur sic movetur quod omnes partes suae moventur, vera erit, sed tunc non erit sermo multum dubius.

Et similiter diceretur de alia conclusione [122] qua dicitur quod illud ad quod est motus est divisibile quia si intelligat quod in motu, ponamus in motu locali, acquiratur una nova res quae prius non fuerit, puta novum [m] ubi, ut imaginantur aliqui, illud sibi negabitur quia frustra ponerentur tales res; unde in motu locali mobile ut dicetur infra [123] acquirit novum locum, id est, reddit se indistinctum localiter ab aliquo inter quod et ipsum erat prius medium interceptum, et hoc non facit sic quin partes contradictionis possint verificari, et sic verum est.

Et similiter alia conclusio [124] tollitur quia dicitur quod in motu non est dare primum mutatum esse, in motu ex parte principii motus considerato mobili quod movetur, magnitudine per quam fit motus, tempore in quo, et termino ad quem; et fundatur ratio super hoc quod omnia sunt divisibilia in semper divisibilia quod est negatum.

Similiter tollitur alia conclusio [125] qua dicitur quod ante omne mutatum esse praecedit moveri, immo supraposuimus mutatum esse quod non praecedit omne moveri respectu illius ut in casu posito supra: [126] si mobile quod est in *a* debeat transferri usque ad *d*, non est verum dicere quod movetur in *b*, sed tamen respectu ipsius *b* habet mutatum esse. Fundatur enim ratio Aristotelis supra divisibilitatem in semper divisibilia eorum quae concurrunt in motu, ut apparet intuenti litteram. Unde dicit quod moveri secundum partem dimidiam praecedit mutatum esse secundum totum, et mutatum esse secundum dimidium magnitudinis praecedit moveri secundum dimidium dimidii et sic semper. Ecce quod supra divisibilitatem in semper divisibilia fundat rationem suam!

Removetur etiam conclusio alia [127] qua dicitur quod indivisibile non movetur. Probat quia tunc spatium componeretur ex indivisibilibus, quod est a nobis concessum, etiam quod in nunc non est motus quod est supra [128] reprobatum. Ratio autem sua per quam probat indivisibile non moveri procedit ab insufficienti quando diceretur: vel moveretur quando est in termino a quo vel quando est in termino ad quem etc.; dicendum quod supra [129] in hoc tractatu declaratum est quod divisio insufficiens est quia nec quando mobile est in termino a quo ⟨*nec*⟩ quando est in termino ad quem fit motus, sed quando est in quodam medio respectu cujus dicitur mutari, tunc movetur, ut quando mobile indivisibile quod est in *a* debet transferri in *d* non movetur quando est in *a*, sed quando est in *b* ad quem non movetur, tunc movetur ut supra [130] declaravi.

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[l] Ms. inhaererem.

[m] Ms. bonum.

[119] Cf. 234 b 15.

[120] Cf. 234 b 22.

[121] Cf. p. 224.

[122] Cf. 236 a 13 ff.

[123] Cf. p. 226.

[124] Cf. 236 a 34 ff.

[125] Cf. 237 b 3 ff.

[126] Cf. p. 207.

[127] Cf. 241 a 6 ff.

[128] Cf. p. 215.

[129] Cf. p. 215.

Primam etiam conclusionem 7 *Phys.*[131] non demonstrat Aristoteles quia supponit quod impossibile fit indivisibile moveri quod in sexto nondum demonstravit; licet etiam supposito quod illud principium esset verum, adhuc non demonstrat ut alias dicetur.[132]

Item alia conclusio *sexti* [133] qua dicitur quod omni motu secundum quod motus contingit dare velociorem quia ut dictum est supra [134] nullum mobile movetur velocius eo quod movetur ⟨*sic*⟩ quod nullo modo quiescit. Unde alias [135] arguebam super hoc contra Aristotelem quia tunc perfectissimum individuum universalis alicujus nec fuisset nec esset in rerum natura.

De Vacuo

Destruximus probabiliter sermones multos. Nunc volumus considerare de quibusdam materiis in quibus habemus dicere aliqua inconsueta juxta posita prius. Et incipiamus sermonem a vacuo, an sit supposita descriptione indicante quid nominis, quod nomine vacui intelligimus illud in quo non est corpus, potest tamen esse corpus. Et videtur quod sic, quia ⟨*si non*⟩, sequeretur quod motus localis secundum rectum non posset esse, vel quod duo corpora essent simul, vel quod uno moto omnia moverentur necessario et mutarent locum. In nullo possumus ita probabiliter remanere sicut in vacuo; igitur ponendum est vacuum.

Quod omnia illa sint inconvenientiora quam positio vacui satis videtur esse notum et concedetur nobis quod sequerentur. Ostenditur quia quando istud corpus mutat locum, vel locus in quem recipitur erat vacuus et sic propositum, vel plenus corpore et tunc vel corpus manet et sic duo corpora erunt simul [vel], quod est alterum inconvenientium, vel recedit et transit ad alium locum, et tunc quaeram ut prius; et sic procedendo, vel concedes processum in infinitum semper, vel duo corpora esse simul, vel concedes vacuum.

Sed hic respondetur quia tandem stabitur quia fiet condensatio; sed hunc sermonem cum negatione vacui non possumus dicere, licet forsan Aristoteles posset juxta sua principia; [136] nam non dicimus quod densum sit per generationem alicujus novae qualitatis quae prius non erat, sed solum est densum per recessum corporum ut in lana, vel quia partes coeunt, id est, quod magis propinque se habent quam prius. Et rarum non erit nisi quia partes illius corporis magis distant quam prius, et ita densum vel rarum non est nisi / per solum 11^{r}
motum localem partium. Et sic non juvaret nos alia acceptio rari et densi.

Est alia responsio quam audivi a quodam valenti magistro quae videatur probabilior et pro Aristotele et pro conclusione nostra. Imaginatur quod in motu locali recto sic statur quia ibi attenditur quodammodo circulus, ita quod si corpus existens in *a* moveatur ad locum *b*, et existens in *b* movebitur ad locum *a* et sic stabitur. Sed istud non videtur sufficere. Imaginemus circa spatium differentias positionis ante, retro etc. Nunc mobile hoc moveatur secundum rectum; videtur quod illud quod est retro, puta aër, prius possit pervenire ad locum illum quam illud quod est ante mobile, et sic illud retro intraret locum et illud retro illud, et sic numquam esset status, ut supra, nisi concedatur vacuum. Item [n] corpus quod est ante illud mobile non videtur moveri nisi quia pulsum et quia cedit. Nunc quaero: aut in eodem instanti in quo illud quod est in *a* est [o] in *b*, illud quod est in *b* est in *a*, et sic non apparet quod hoc magis cederet huic quam e contra; tunc qualiter hoc quasi pulsum cederet? Vel in alio et tunc, vel in illo instanti primo duo corpora erant simul, vel erat vacuum. Et forsan huic argumento in aliis fieret contra aliam viam. Quod locutus fui de instanti immediato intellige secundum conclusionem suprapositam [137] qua dictum est quod continuum componitur ex indivisibilibus et tempus ex instantibus.

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[130] Cf. p. 216.
[131] Cf. 241 b 24 ff.
[132] Cf. p. 224.
[133] Cf. 232 b 20 ff.
[134] Cf. p. 207.
[135] Cf. p. 214.
[136] Cf. 213 a 10 ff.

Adduceretur aliud argumentum de musto [138] quod est in dolio; quando rarefit est major quantitas in apparentia, nec est propter generationem novae qualitatis ut supra, nec propter adventum corporum novorum, sed solum videtur esse quia partes coeuntes, quasi esset ibi quaedam conculcatio, nunc segregarent se et magis quam prius distarent. Item attestatur huic rationi illud quod videtur intelligibilius in descriptione rari et densi. Descriptio consueta densi est quod densum est cujus partes magis propinque jacent. Unde aqua non videtur densior aëre nisi quia partes ejus magis propinquae sunt ad invicem, et ita in raro partes aliquo modo distant, ita quod intercipitur vacuum, id est, partes possent esse magis propinquae ad invicem; et est aliquid ubi non est corpus ubi tamen posset esse. Sic expono, nam suadentes oppositum nomine solo videntur terrere [p] homines.

Verum est quod alii utuntur in alia significatione descriptione densi ut dicant quod illud est densum quod minus cedit tangenti; sed rarum est quod cedit. Sed tunc non terminatur secundum hoc aliquod quaesitum quod naturaliter quaerit intellectus, scilicet quare hoc corpus est densius alio.[q] Item incidunt in descriptionem aliorum, scilicet solidi et levis. Unde conceptus densi venit ad intellectum per solam visionem corporis, ut statim viso corpore, ex eo quod videmus id [r] sic se habere dicimus quod est densum, sed solidum venit ad intellectum mediante tactu ut dicatur illud esse solidum quod difficiliter cedit tangenti; leve e contra. Et si sic diceremus, quod nunc plene non determino, inquisitio haberetur [s] super solutione contrariorum; et primo esset videre qualiter positio vacui destruit objectionem suprapositam [139] qua concludebatur: vel motus localis non esset, vel uno moto moverentur omnia etc. Dicendum quod ille erit intellectus in motu locali; nam quando corpus in aëre movetur localiter, partes aëris aliquo modo comprimunt se et coeunt, et sic non oportet quod sit talis processus in infinitum, vel quod duo corpora sint simul. Et imaginetis consimiliter ei quod diceretur; pone quod in lana non sint intercepta illa corpora subtilia quae dicuntur ibi esse et aliquis esset in camera plena lana et moveretur, partes coirent magis et fieret major appropinquatio. Contra conclusionem istam, si essent aliquae rationes bonae, videretur quod essent rationes Aristotelis in 4 *Phys.*,[140] licet paucae sint, immo quasi nullae. Contra sic ponentes vacuum quasi imbibitum adducit Aristoteles aliquas in 4 *Phys.*; [141] sed ille ibant ⟨*magis*⟩ contra causas propter quas ponebant vacuum quam contra conclusionem in se et illis causis non utimur. Arguitur sic, et videtur ratio multum difficilis et reputatur subtilior suarum rationum, saltem contra [t] unum modum ponendi vacuum: si esset, sequeretur quod motus localis fieret in instanti. Consequentia probatur quia qualis est proportio medii ad medium, talis est proportio motoris ad motorem in velocitate et tarditate; nam apparet quod secundum majorem resistentiam medii redditur motus tardior; nunc medii pleni ad medium vacuum nulla proportio; ergo nec motus ad motum in velocitate et tarditate. Nunc si motus per vacuum esset in tempore, esset aliqua proportio sicut inter tempora; igitur erit in instanti.

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[n] Ms. ita. [o] Ms. et. [p] Ms. t're. [q] Ms. aliorum. [r] Ms. eas. [s] Ms. haberet. [t] Ms. cum.

[137] Cf. p. 207. [138] Cf. 213 b 16. [139] Cf. p. 217. [140] Cf. 214 b 12 ff. [141] Cf. 216 b 22 ff.; cf. IV *Phys. tx. com.* 79.

Primo est videre quod ista ratio non est contra modum ponendi vacuum quo usus sum, nec Aristoteles voluit adducere; nam non ponimus vacuum separatum praeexistens per quod fieret motus, sed inter partes corporis; et quando corpus localiter debet moveri, illae partes coeunt se et magis appropinquantur. Nunc si vis loqui de motu istius corporis primi quod ponitur moveri per medium, cujus partes coeunt, licet recipiatur in vacuo, tamen prius erat plenum, et secundum quod illae partes, ceteris paribus, velocius coeunt se, secundum hoc corpus movetur velocius, sicut forsan si poneremus ipsum moveri per vacuum praeexistens. Sed licet ratio non obviet nobis ex ista parte, obviat ex alia de corpore cujus partes coeunt; nam secundum hoc partes coeunt ad intra ubi erat vacuum praeexistens et ita ut videtur motus illarum est in instanti.

Ex aliis modis ostenditur quod ratio non concludit. De consequenti an sit inconveniens, vidisti supra in tractatu de motu; [142] nam mobile potest esse in aliquo loco in quo non erat prius in instanti, et si per motum intelligeres compositum ex pluribus mutatis, tunc non esset in instanti sed in pluribus. Et quidquid sit de consequente quod non dicimus simpliciter esse inconveniens ut supra in tractatu de motu,[143] dico quod consequentia non valet si bene sciatur quid est illud in quo attenditur velocitas et tarditas unius mobilis supra aliud prout [u] supra in tractatu de continuo [144] cum respondi ad rationes Aristotelis.

Unde breviter removendo: agens non dicitur tardius nisi quia aliquo modo quiescit; est ergo considerare in motu quamdam essentialitatem ut sicut una pars spatii est prior alia, sic prius pertransitur, et illa essentialitas non potest removeri. Et est considerare tarditatem quae contingit ex hoc quod mobile quiescit, ita quod dicere: unum mobile est tardius alio, non est nisi dicere: unum mobile magis quiescit alio, et ita quies vel inest mobili ex determinatione suae naturae vel ex resistentia medii, ita quod partes medii non coeunt se faciliter. Nunc igitur esto quod sit motus in vacuo, non sequitur quin illud habeat proportionem ad motum factum in vacuo, quantum ad illud quod erat in motu essentiale ut prius pertransiretur una pars spatii alia; et ita non concluderes adhuc quod motus factus per totum spatium fiat in instanti. Item non / 11^{v} quod nulla quies sit; et hoc est verum si non dixerimus quod totalis causa quietis in tali motu sit resistentia medii, sed quod causa quietis sit determinatio ipsius moventis. Et ille intellectus, quem posui super successione, quod attendatur super ordine partium in spatio, fuit intellectus Avempeche ut videtur.[145]

Adducuntur aliae rationes ad negationem vacui quasi experientiae quaedam naturales quae non videntur habere locum nisi propter impossibilitatem vacui. Primum est de clapsedra; [146] est unum vas habens foramen infra et supra et repleto aqua; si teneatur digitus supra non exiet aqua, licet de natura sua habeat descendere; si removeatur descendet. Et quod non descendat in primo casu non videtur nisi propter fugam vacui quia esset vacuum si exiret, quod [v] aliud corpus per supra, cum illud sit obturatum, non posset intrare; nec per infra [w] quia tunc duo corpora essent simul in eodem loco quod est impossibile. Dic: ista ratio non fit contra conclusionem quam tenemus quia nondum posuimus quod sit possibile tale vacuum separatum existere quod esset in posito [x] remota aqua.

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[u] Ms. quod ut.

[142] Cf. p. 207.

[143] Cf. *ibid.*

[144] Cf. *ibid.*

[145] Cf. IV *Phys. tx. com.* 71.

[146] Cf. 213 a 27.

Item audivi subtilem responsionem: quod aqua non exeat non est propter fugam vacui, sed imaginantur quod totum universum habeat suum modum plenitudinis, ita quod tantum est quantum potest intrare in universum considerato bono esse entium. Nunc si illud corpus exiret non posset aliud intrare, et ita vel totum universum non fuisset totum plenum vel duo corpora [non] essent simul. In eo [y] nunc eligo primam responsionem.

Secundum significationem qua [z] ponimus vacuum occurrit dubitatio. Pone hoc corpus movetur localiter; dicis quod partes corporis, puta aëris, quae erant in loco ad quem movetur coeunt se, ita quod tenent minorem locum quam prius. Sed secundum hoc quaero de loco a quo recedit, an aliquid intret; quod si negaverimus, tunc erimus in significatione vacui cum aliis ut ponamus vacuum separatum; si non, sed aliquid intret, puta aër, et sic quaeremus de loco a quo recedit ut prius, et ita non evitabimus aliud inconveniens propter cujus fugam ponebatur vacuum. Et forsan erit super hoc conveniens responsio ut dicamus quod partes aliquae aëris, quae erant quasi retro corpus, quod movebantur, aliqualiter dilitant se, ita quod minus coeuntes replent locum et hoc usque ad aliquam quantitatem; non tamen in infinitum.

Item licet non haberemus ponere ex illa parte vacuum, tamen poneremus propter aliud ne incideremus in inconveniens de corporibus quae sunt ante, quod uno moto omnia moventur.[147] Item quia ut diximus breviter quod in instanti priori partes spatii coeunt se, et hoc non approbamus, et super hoc forsan alias erit consideratio.

Contra illud quod diximus de vacuo est experientia de vesica inflata quae comprimi non potest; quod non videretur esse, si esset vacuum interceptum, ita quod partes possent coire; et hic esset dicendum alterum duorum modorum; vel sic quod partes corporis illius quod includitur in vesica non possunt ultra comprimi, saltem faciliter; unde licet partes aëris per quem fit motus coeant; non tamen sic sunt cohibiles quin inter eas aliquid vacu remaneat; habent ergo quod possint coiri usque ad aliquem modum, qui modus non habet locum in illo quod est in vesica. Aliter diceretur quod hoc est quia tunc remaneret vacuum separatum ad partem totaliter, ita quod non subintraret aliud corpus.

Ad positionem vacui adducebant antiqui [148] unam rationem; arguebant sic: si vacuum non esset, augmentatio localis non esset. Probabant quia augmentatio non fit nisi adveniente aliquo corporeo; vel ergo illud recipitur in pleno vel in vacuo; si in pleno, duo corpora essent simul; si in vacuo, propositum; nec valeret dicere quod in aliquo repleto prius aliquo subtili corpore. Primo non videtur nisi fuga; secundo quia non occuparet secundum hoc majorem quam illud corpus. Nunc totum brachium cum illis corporibus interceptum non erat prius nisi magnitudinis unius pedis et nunc est magnitudinis duorum pedum. Aristoteles non respondet ad istam rationem, sed dicit [149] quod illae rationes impediunt se ipsas; nam esto quod vacuum sit, adhuc sequitur quod augmentatio non erit quia, vel sequitur quod quaelibet pars aucti non erit aucta, vel quod augmentatio non fiat adveniente aliquo corporeo, vel quod duo corpora erunt simul, vel quod totum corpus erit auctum. Probatio consequentiae [a] quia, si in corpore aucto sunt vacuitates, vel ergo sunt undique vacuitates, et sic totum erit vacuum et nihil erit de corpore; quod est alterum inconvenientium; vel aliqua pars corporis aucti est vacua et aliqua plena, et tunc vel pars plena carens etiam vacuitate augetur, vel non; si detur quod augetur, quaero: aut adveniente corporeo, aut non? Si non, alterum inconvenientium; si augetur adveniente corporeo, tunc cum illa pars sic posita esset omnino plena, duo corpora secundum eos erunt in eodem loco.

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[v] Ms. p°. [w] Ms. illa. [x] Ms. potu *corr. from* po^{to}. [y] Ms. iuro? [z] Ms. quam.

[147] Cf. p. 217. [148] Cf. 213 b 13. [149] Cf. 214 b 4.

Salva reverentia Aristotelis ista ratio non facit contra eos. Videatur primo quid intellectus erit in augmentatione. Pone corpus aliquod compositum est ex indivisibilibus quattuor *a b c d;* dico quod inter ista indivisibilia sunt vacuitates; perpone inter *a* et *b* per unum indivisibile; dico quod ad adventum rei convenientis quasi dilitabant se, ita quod quodammodo elongabant se, puta *a b* per vacuitatem duorum indivisibilium, et ibi recipient [se] intra se illud quod est conveniens suae naturae, et sic fiet augmentatio. Et intellectus hujusmodi propositionis illius: quaelibet pars aucti est aucta, non comprehendit omnino partes primas corporis aucti ut sit intellectus quod indivisibile augetur; sed intellectus est quod post augmentationem de qualibet parte composita demonstrabili ad sensum comparata ad talem, quae antecedebat augmentum, verum est dicere quod est major, ut puta manus post augmentum est major quam ante augmentum, et sic in aliis.

Item arguebant antiqui de vase repleto cineribus quod tantum recipit de aqua sicut si non essent cineres vel quasi. Commentator Averroes [150] qui vult solvere primo dicit quod non est expertus; secundo dicit quod hoc est quia aliquae ⟨*partes aquae*⟩ corrumpuntur et aliquae partes cineris; quod declarat quia, si cineres post desiccentur, non apparent in tanta quantitate. De primo videtur quod non multum esset amator veritatis negligere experientiam ita facilem; secundum videtur fuga, nec illud obstat quod dicit quia dicerent antique / quod, si appareat minor quantitas, hoc est quia partes 12 r
magis sunt prope quam prius.

Alio modo arguebant antiqui [151] contra negantes vacuum et ponentes generationem in rebus quia pone quod ex corpore minoris quantitatis fiat corpus majoris quantitatis, tunc vel oportet quod sit vacuum vel quod fiat necessario condensatio corporum vel quod in alio loco sicut hic ex minori generaretur majoris quantitatis, quod necessario alibi ex majori generaretur minoris quantitatis secundum eandem proportionem; et hoc fugiendo concedunt. Sequitur consequentia in eo quod corpus generatum occupat majorem locum quam prius faciebat.

Item quando arguitur de corpore, quod movetur localiter, aut recipitur in pleno aut in vacuo; si in pleno, duo corpora simul; si in vacuo, propositum. Respondet ultimus de expositoribus Aristotelis quod vel per "recipi" [b] ⟨*intelligitur* "*recipi*⟩ praecedens" et sic recipitur in pleno alio corpore, vel receptum esse et sic recipitur in pleno illo corpore quod recipitur et sic numquam est vacuum. Immo videtur secundum dicta quod sit vacuum quia verum est quod unus conceptus vacui est quasi relativus et non attribuatur rei nisi quando inest negatio corporis; sed vacuum tamen videbitur esse quantum ad illud absolutum quod dicit sive illud sit ens positivum sive privativum ut, si ab illo ubi tolleretur, sic illud corpus quod non intraret aliud corpus, diceretur illud in quo erat illud corpus prius vacuum esse. Si adveniret corpus natura sua non tolleretur, solum quidam conceptus relativus prius concipiebatur ut existens sub negatione corporis modo concipietur ut existens sub contrario. Verum est quod sic dicenti diceretur, nisi haberet aliud ad fundandum [c] imaginationem suam, quod ducitur imaginatione, cui non est credendum.

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[a] Ms. continue.

[b] Ms. recepi.

[150] Cf. IV *Phys. tx. com.* 56; cf. 213 b 21.

[151] Cf. 213 b 12 ff.

De Substantia Materiali et Quantitate

Circa quaestionem de substantia materiali et quantitate eo modo quo dicitur: quantitas est una res inhaerens substantiae materiali distincta ab ipsa; quaerendum est utrum distinguantur ad invicem. Et primo inquiretur de quantitate permanente continua et discreta; deinde de successiva.

Pro primo ponitur una conclusio, videlicet quod intellectus non necessitatur per aliquam rationem dicere quod quantitas permanens sit res distincta a substantia materiali. Hic primo est inquirendum qualiter problema super identitate totali sit terminabile ab homine. Non autem terminatur de identitate partiali problema nisi per ostensionem aliquorum in quibus conveniunt sicut duae albedines conveniunt in hoc quod est esse disgregativum visus. Et similiter identitas totalis non concludetur nisi per convenientiam in omnibus quae possibilia sunt attribui istis. Et sequitur ex hoc cum quodam alio quod non est plene terminabile ab homine; nam in illam conclusionem non potest plene intellectus quae dependet ab una minore non plene intellecta; sed sic est hic; nam dependet ex ista minore: omnia, quae insunt huic rei, insunt illi et eodem modo; nunc vero non est plene scita; nam dato quod ostenderetur quod in istis et in istis conveniunt, non sequitur propter hoc quod in omnibus quia forsan quaedam insunt huic rei quae non cognoscis. Sufficit igitur, ex quo non est plene terminabile a nobis, si ostendatur, ut est possibile, inducendo in eis quae videntur utrique rei inesse et in illis ostendere convenientiam totalem. Et ideo in disputationibus quando opponens ostendit quod in omnibus quae videntur cognosci ab homine conveniunt, oneratur respondens de dicendo illo in quo non conveniunt aut identitate totali concepta. Sufficit ergo sic ponere ut nihil relinquatur de cognitis.

Juxta dicta pono aliquas conclusiones quarum prima est quod quantitas permanens non distinguitur a substantia materiali quod probatur, ut tale problema est probabile, a nobis. Illa quae conveniunt in omnibus, quae cognoscuntur eis inesse, non distinguuntur; sed quantitas quantum ad omne illud quod est extra animam et substantia materialis sunt hujusmodi. Probatio: illa quae inseparabiliter totaliter se habent quantum ad omnem motum vel mutationem ut veniunt ad intellectum nostrum veniunt ut convenientia totaliter; unde intellectus nihil potest attribuere uni quin possit alii; sed sic est; si enim fit quantitas major, et substantia; si generatur, et substantia, et sic de aliis; ergo convenientia sunt totaliter. Iste vero modus arguendi sufficit Aristoteli in 4 *Meta.*[152] cum probavit quod ens et unum sunt idem quia eadem generatione generantur etc. Et vide, vel ibi accipit "eadem generatione" quantum ad mensuram temporis, et hoc erit magis quantum ad confirmationem propositi; vel simpliciter, et tunc adversarius negaret minorem, immo diceret [d] quod ibi sunt duae generationes quarum una est prior altera natura sicut et ens unitate prius natura. Et advertendum quod quia pluralitas non est

[c] Ms. fundendum. [d] Ms. dicere et.

[152] Cf. 1003 b 22 ff.

ponenda sine necessitate, sufficit tenentem identitatem scire respondere ad argumenta contraria conclusioni; unde et illi qui ponit distinctionem incumbit onus probandi.

Per idem potest dici quod subjectum et propria passio quantum ad omne illud quod [quo] potest accipi ex parte rei non distinguuntur, quia secundum nullam speciem motus separantur. Per idem de igne et sua caliditate, de aqua et sua frigiditate et sic de aliis comparando ad ea quae longo tempore dicta sunt esse qualitates elementorum. Per idem potest dici quod numerus continuorum quantum ad illud quod importat extra intellectum non distinguitur a continuis. Etiam propter aliud quia quandocumque duae propositiones sunt quibus occurrunt aequales causae impossibilitatis vel falsitatis, si verificentur sine hoc quod predicatum ponatur importare rem inexistentem subjecto distinctam ab eo, si una verificetur sine tali distinctione et alia sic, uniformiter potest poni vera. Sed sic est; dicitur enim duae intelligentiae, duo continua. Nunc non occurrit magis impossibile ex una parte quam ex alia; nam si conceptus dualitatis potest haberi circa duas intelligentias, esto quod nihil insit commune realiter distinctum ab eis, non videtur quod sit magis impossibile de duobus continuis. Per idem potest dici de relationibus et universaliter de aliis predicamentis quoniam quando sunt duo alba, nihil apparet ex parte rei neque generari neque corrumpi quin et alterum sic se habeat. Et si in quibusdam appareat dicetur dubitando.

Videtur autem quibusdam quod numerus duorum continuorum distinguatur a duobus continuis; nam illa sunt distincta quae sic se habent quod aliquid realiter inest uni quod non inest alteri. Sed sic est hic; nam si duo continua sint et quodlibet fiat majus per additionem aut . . . aut alias ista continua nunc sunt majora quam prius, et tamen dualitas non est major quam prius; dico quod dualitas / potest accipi vel pro eo ex natura rei pro quo supponit cum dicitur: duo continua sunt duo, et tunc concederetur quod illud est majus quam prius. Alio[e] modo pro eo quod significat, et tunc importat talem conceptum cui secundum quod abstrahitur a rebus est omnino extrinsecum quod sint magnae vel parvae. Unde cum intellectus concepit istam rem ut in se indivisam et divisam a quacumque alia et aliam rem similiter et comparat unam ad aliam, abstrahit conceptum dualitatis. Per idem diceretur de aequalitate; si argueretur quod distinguitur ab illis de quibus dicitur, quia si unum de fundamentis suis fiat majus, ipsa corrumpitur, dico quod remanentibus extremis semper remanet quantum ad illud pro quo supponit. Sed abstractioni conceptus illius qui signatur[f] per aequalitatem, erant primi alii conceptus qui nunc non habentur de rebus; nam quando intellectus videbat quod, istis duobus corporibus juxta se positis, quicquid erat in primo corpore habebat aliquid correspondens in alio, ex hoc abstrahebat conceptum aequalitatis, et per adventum novae rei alteri corporum, hoc est quod fiat majus altero non facto, cessant illae propositiones. Et similiter dicatur si arguatur de similitudine quae attenditur inter duo alba, quando unum illorum fit albius remittitur similitudo.

12v

De Motu

NUNC autem de motu; videndum est an distinguatur a mobili et ponamus de motu locali. Advertendum est sicut dicit unus haec nomina "motus," "motio" non fuerunt inventa propter ornatum; unde si propositiones in quibus talia ponuntur resolverentur in verba, multae difficultates vel dictae vel reales cessarent. Videamus igitur quid importetur per praedicatum hujus propositionis: aliquod ens movetur localiter. Primo videndum est qui conceptus veniunt ad animam cum apparet aliquod corpus moveri localiter, ut appareat qualiter conceptus hujus quod est "moveri localiter" abstrahatur ab eis. Et dico quod isti conceptus veniunt: corpus quod movetur, locus vel medium inter quod et mobile erat prius medium nunc ibi est negatio medii. Item venit apud intellectum quod mobile quod movetur localiter sic se habet quod numquam partes unius contradictionis possunt verificari, primo ipso existente in eodem loco. Dico nunc quod istis habitis conceptibus habetur conceptus hujus quod est moveri, et dato quod iste terminus sit incomplexus. Movetur tamen omnes istas complexiones importat, et illa oratio in quibus ponitur aequivalet multis propositionibus. Unde dicere: hoc ens movetur localiter est[g] idem sicut[h] dicere totum illud: inter hoc corpus et aliud erat prius medium, nunc est negatio medii, et nunc ipso se habente per negationem medii ad locum aliquem, partes contradictionis non possunt verificari.

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[e] Ms. alo. [f] Ms. signa^2.

Nunc dico quod nomine "motus" non importatur aliquid omnino distinctum ex parte rei loco negatione medii et sic de aliis; nam per ista omnibus aliis realitatibus remotis poterit vere salvari quidquid apparet in rebus. Et ex his apparet clare qualiter aliqui garrulosi, qui prius volunt arguere contra hominem quam ejus intellectum habeant, decepti sunt. Arguunt sic dicentes: conclusionem praedictam de motu habet contradicere sibi ipsi quia mobile heri motus non fuit heri; ergo mobile non est motus. Dico quod verum concludunt aliquo modo quando dicunt: mobile non est motus, sed nihil contra me; concedo enim quod dixerunt: mobile est mobile et mobile movetur non est unum et idem ex parte praedicati sicut in synonimis, immo dico quod hoc praedicatum "movetur" importat multas complexiones ut supradixi,[153] et altera non inexistente, non esset vera propositio qua diceretur: mobile movetur, et tamen alia esset vera: mobile est mobile. Sed volo et volui dicere in conclusione de motu quod hoc praedicatum "movetur" non importat unam rem positivam inexistentem mobili ut communiter imaginatur. Nullam talem rem pono quia non est necessarium ut visum est, nec etiam bene intelligibile. Nec adhuc audivi bonam solutionem ad rationem antiquorum [154] probantium quod motus non sit quoniam illud quod componitur ex non entibus est non ens. Sed sic est per adversarium; nam imaginantur per motum unam rem successivam, cujus una pars praeteriit et alia futura est, et ista non sunt bene intelligibilia; nam in sciendo veritatem propositionis de praeterito semper intellectui est mensura veritas propositionis de praesenti.[155] Unde ideo dicit: haec est vera: Socrates amavit heri, quia aliquando haec fuit vera: Socrates amat. Et apparet solutio plenior hujus propositionis; nam dicere ista res fuit heri non est aliud nisi dicere: tempus aliquod prius isto mensurat esse istius rei. Sed respondent dicentes quod, licet partes motus non sint in esse permanenti, sunt tamen in esse successivo, et hoc sufficit ad ejus successionem. Non video bene istam responsionem nisi velint dicere quod enti successivo sufficit quod sit non ens; sed non videtur intelligibile quod aliqua entitas positiva sit et tamen sic sit quod componatur ex duabus partibus de quarum una verum est dicere quod praeteriit et illa est non ens, et de alia quod futura est, et alia est non ens.

Secundum supradicta sumus exonerati [i] talibus inintelligibilibus quoniam ad veritatem hujus propositionis: mobile movetur, non oportet ponere

[g] Ms. et.
[h] Ms. si cum.
[i] Ms. exhonorati.

[153] Cf. p. 214.
[154] Cf. 325 a 25 ff.
[155] Cf. 18 b 9 ff.

aliquam rem talem positivam inhaerentem mobili, sed sufficit ponere illa de quibus supradiximus,[156] scilicet: mobile quod movetur, terminum a quo, terminum ad quem, negationem medii, et quod ipso sic se habente, partes unius contradictionis non possint verificari. Istis enim praesentibus, omnibus aliis remotis, haec est vera: mobile movetur. Negationem medii intellige ut supra; nam quando inter illud mobile et tale spatium est negatio medii quod prius erat interceptum, aliis concurrentibus, dicimus quod mobile movetur.

Et ex praedictis apparet quod non est necessarium ponere quod quantitas sit una res inhaerens substantiae materiali ut imaginatur, et hoc dictum est de omni quantitate tam permanente quam successiva quia maxime inter eas videretur oppositum dicendum de motu.

Nunc autem secundum declarata supra haec conclusio est probabilis, licet secundum veritatem simpliciter et fidem Catholicam non sit vera, quod omnes res permanentes et successivae sunt aeternae, quare satis potest inferri universalis quod omnes res sunt aeternae. Rationes adductas pro altera parte non oportet multum solvere quia concludunt super probabilitate.

Et si bene advertisti ad ea quae dicta sunt de motu, multae instantiae, quae videntur omnino concludere, nihil valent. Probatur enim quod, si tu va/dis ad Nostram Dominam, quod tu semper vadis quia, si non, tunc ille 13r motus esset corruptus, diceretur quod non semper vado ad Nostram Dominam. Et cum dicitur: ergo motus ille erit corruptus, dico quod si intelligas aliquid positivum sit corruptum, falsa est; sed volo quod motus sit corruptus, si sic velis uti nomine, id est, mobile quod prius movebatur nunc non movetur, et hoc potest esse sine corruptione alicujus entis positivi; nam ut dictum fuit, hoc praedicatum "movetur" importat multas complexiones. Significat quod mobile se habet ad aliquid per negationem medii ad quod prius non sic se habebat. Nunc de mobili quando dicimus ipsum quiescere non potest illud vere dici, et si potest dici, tamen secundum quod importat hoc praedicatum "movetur," non sic potest dici, scilicet et ipso sic se habente, partes unius contradictionis non possunt verificari; unde haec esset falsa. Et sicut hic in isto motu locali aliqua res non acquiritur quin praecessisset, sed solum fit indistinctio alicujus ab aliquo, sic nec in motu spirituali [j] qui attenditur penes animam de quo supradixi [157] in tractatu de aeternitate rerum non nova intellectio vel nova scientia, quae non fuisset prius, acquiritur, sed solum quaedam indistinctio quasi subjectiva inter animam et scientiam ponitur; et dico quasi subjectiva; nam illa quae non substant sensibus non concipiuntur, ut alias videbitur, conceptibus propriis essentialibus. Ideo explicatio solum potest fieri secundum quasdam similitudines extrinsecas.

Et si quaeras a me juxta illum errorem numquid semper fuerim, dico quod dicendum est consequenter me fuisse intelligendo ut sequitur: quando lapides sunt adunati, tunc dicitur acervus; si separentur amplius non dicitur acervus, tamen omnis vera entitas quae prius erat est nunc, et quando inter has res est negatio medii secundum locum dicuntur sic, puta acervus. Sic hic verum est quod omnis entitas vera, quae in me est nunc, semper fuit et semper erit, sed non erunt secundum indistinctionem subjectivam ut nunc sunt. Aliquando enim illa atomalia ex quibus constituitur substantia mea erunt dispersa et sic fuit infinities, et sic erit secundum opiniones istas.[158] Secundum dicta visum est quod non est necessarium ponere quod motus significet unam rem inexistentem mobili ut communiter ponitur. Contra: motus est velox vel tardus et tamen mobile non est velox neque tardum. Dicendum secundum supradicta quod si propositiones in quibus ponitur hoc nomen "motus" resolverentur in verbum sumptum loco hujus termini, multa cessarent quae videntur difficilia ad intelligendum. Resolvamus ergo: motus est velox vel tardus, id est, mobile movetur velociter vel tarde, et illa propositio potest dici esse vera sine omni tali realitate, quae imaginatur inexistere tali rei. Per hoc enim quod aliquod mobile se distinguit ab aliquo termino sic, quod pauciores partes contradictionis possunt verificari quam sunt illae quae possunt verificari in alio mobili indistinguente secundum locum ab illo termino, dicitur hoc mobile velocius moveri alio; et quanto pauciores possunt verificari, tanto movetur velocius. Vel dic de veloci ut supra in tractatu de indivisibilibus[159] et sic non valuit objectio.

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[j] Cf. pp. 190 & 205.

[156] Cf. p. 214.

[157] Cf. p. 190.

[158] Cf. Diogenes Laertius IX, 30 ff.

Alia objectio potest fieri quia per motum acquiritur aliquid; per mobile ut sic non dicendum est. Sensus primae propositionis qua dicitur: per motum acquiritur aliquid, debet esse: mobile quando movetur acquirit aliquid, et illud "acquirere" posset bene et male intelligi; nam si intelligas quod ponatur aliqua res nova in esse, falsa est; si intelligas aliquid pro quanto indistinguit se localiter per negationem medii intercepti, vera est. Imaginantur tamen adversarii quod ibi sit una forma derelicta in corpore locato a corpore locante; non video secundum supradicta quod tales realitates modicas oporteat ponere.

Sed quaeret aliquis: ex quo substantia materialis et quantitas non distinguuntur, numquid ista sit concedenda: substantia materialis est quantitas? Dico quod ista possunt accipi dupliciter; vel praecise ut signa rerum extra animam, et ut sic concederem propositionem esse veram; alio modo ut signa conceptuum vel rerum sic conceptarum, et ut sic non est concedenda; nam illi rei conceptae secundum se imponitur nomen substantia, vel eidem relate ad illa quae dicuntur operationes rei; eidem vero ut habenti partem extra partem imponitur conceptus quantitatis, et isti sunt diversi conceptus. Et considerandum quod isti conceptus ut sunt signa rerum vel res ut sic conceptae aliquando se habent invicem aliquo modo sicut includens et[k] inclusum, pars et totum, ita quod uno posito apud intellectum aliquo modo ponitur alterum, et illo remoto removetur istud; sicut si ponatur apud intellectum quod hoc ens non habet partem extra partem; ex isto Aristoteles[160] concludit quod non est magnitudinis infinitae, et si ponatur magnitudinis, ex hoc abstrahit sicut partem a toto quod habet partem extra partem. Si etiam ponimus aliquod ens esse hominem, ponimus implicite ipsum esse animal, et tunc [cum] intellectus abstrahit conceptum a conceptu donec deveniat ad conceptum simplicem; et sic abstrahendo invenit decem conceptus simplices qui includuntur in omnibus aliis et ipsi et ea in quibus includuntur sunt medium respectu omnis inquisitionis scientificae; et istos decem conceptus primos vel res sic conceptas appellat decem praedicamenta; et si per decem praedicamenta vis aliud intelligere puta decem res ex natura rei distinctas negarem simpliciter. Nec sequitur: decem conceptus, ergo decem res quarum primo sunt isti conceptus; nam forsan verum est si haberemus conceptum perfectissimum de re, ille conceptus non compateretur aliquando conceptum ejusdem rei, ita quod tunc teneret argumentum: tot conceptus, ergo tot res. Nunc autem solum partialiter capimus res, et ita nihil prohibet quin ejusdem rei habeamus plures conceptus. Etiam licet concludere aliquo modo: quot conceptus, tot res, sed non sic ut opinantur homines communiter, sed sic: res concipitur secundum se et ille est conceptus substantiae; concipitur ut habens partes et ille conceptus importatur per hunc terminum "quantitas." Primo conceptui ut vides accidit quod res habeat partes plures, sed secundo conceptui non, et ita aliquo modo plures conceptus, ergo plures res, sed non sic quod quantitas importet unam rem totaliter distinctam a prima.

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[k] Ms. etiam.

[159] Cf. p. 207. [160] Cf. 206 b 34 ff.

Sed videretur aliquibus quod substantia materialis et quantitas distinguerentur realiter medio genere; [1] sequitur quia quaecumque differunt genere differunt specie, sed quaecumque differunt specie differunt realiter. Dicendum quod haec maxima: quaecumque differunt specie differunt realiter, est solum vera in illis quae sunt sub eadem ordinatione praedicamentali, et non sub quacumque, sed solum sub illa quae dicitur substantia; vel saltem non tenet in quantitate; / nam conceptus illius coordinationis sumuntur a rebus ut in se 13^{v} sunt, vel ut concipitur in suis operationibus; ponamus in exemplo: cum visui offertur albedo et intellectus secundum hoc est in actu, habet conceptum albedinis; cum visus aspicit albedinem in alio situ ab isto quasi per modum abstractionis venit apud intellectum conceptus similitudinis, et tunc quasi abstrahit quemdam conceptum communem, et dicit quod ista sunt ejusdem speciei quia non percipit diversitatem in sensu fuisse, vel quasi nulla fuerit diversitas; occurrit post nigredo, et tunc abstrahitur conceptus diversitatis. Et quia isti conceptus sunt quasi essentiales rebus, igitur quae sic differunt secundum tales conceptus apud intellectum differunt realiter, si de aliquibus possit dicere intellectus quod differant realiter. Sed postea considerat intellectus quod illa res videtur hic et hic, et sic quod quasi videntur ibi esse aliqua, quorum unum est extra aliud, et isti conceptus quodammodo sunt magis extrinseci rei quia quasi accipiuntur per comparationem ad extrinsecum, et isti conceptui qui dictus est imponit intellectus hoc nomen "quantitas." Et tunc quae differunt sic secundum tales conceptus non differunt realiter, immo ejusdem rei tales plures conceptus possunt haberi sine hoc quod imaginetur aliqua realitas inhaerens huic rei. Verum est ut supradixi [161] quod oportet rem respectu cujus abstrahitur conceptus importatus per hoc nomen "quantitas" habere plures partes. Dico nunc quod quae sic differunt genere non differunt realiter.

Similiter accipiamus duo in coordinatione quantitatis quae dicuntur differre specifice, lineam et superficiem. Dico quod non oportet quod ista differunt realiter quia ut dictum est quantitas non distinguitur a substantia materiali et similiter nec species ejus, puta longitudo a substantia longa, latitudo a substantia lata. Et reddebatur causa quare non oportet secundum talem diversitatem conceptuum ponere diversas res quia alter eorum, scilicet conceptus quantitatis accipiebatur a re quasi extrinsece, non secundum quod ipsa venit apud intellectum secundum illa quae ponuntur esse operationes naturales rei. Et propter eandem causam, immo majorem ubi ambo erunt extrinseci ut conceptus longitudinis et latitudinis non poterit esse diversitas realis nisi quod bene verum est quod illae partes secundum quas attenditur longitudo quae est terminus alicujus latitudinis non sunt illae partes secundum quas attenditur latitudo cujus est terminus. Sed ex hoc non sequitur quod sit diversitas rerum inhaerentium substantiae ut imaginantur homines communiter intelligere quod dictum est illos conceptus esse quasi intrinsecos secundum suas operationes, et quod dictum est conceptus quantitatis esse extrinsecos quia non accipiuntur a rebus secundum operationes rei. Et ideo dictum est convenienter quantum ad hoc per Commentatorem super 4 *Phys.*[162] quod quantitates non sunt de genere virtutum activarum vel passivarum quia accidit rei secundum quod ab ea abstrahitur conceptus quantitatis quod sit activa vel passiva.

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[1] Ms. iiieo qud gn'o.

[161] Cf. p. 226.

An Omne Illud Quod Apparet Sit

Consequenter tractandum est de hoc problemate an omne illud quod apparet sit; et omne illud quod apparet esse verum sit verum. Circa quod considerandum est quod dicens: omne quod apparet est verum, saltem loquendo de apparentia quae attenditur secundum sensus exteriores, sufficit satis quod sciat respondere ad contrarium; nam regula generaliter posita non debet modificari nec restringi nisi sit necessitas cogens ad modificandum, et ita sufficit quod sic dicens sustineat onus respondentis; sufficit enim quantum ad faciendum inclinari magis intellectum isti conclusioni quam oppositae.

Nunc ut videbitur infra [163] non est necessarium ad salvandum apparentia: omnia esse vera, modificare regulam; igitur universaliter tenenda est regula. Et licet illud aliqualiter sufficeret quia tamen intellectus non quietatur in sciendo negationem actus sciendi circa oppositum, sed etiam quaerit ex aliquibus probabilibus concludere propositum. Eapropter inducam aliqua probabilia circa quaesitum. Dico igitur si aliqua certitudo nobis insit de rebus quod probabile est quod omne illud quod apparet esse sit, et quod omne illud quod apparet esse verum sit verum. Et intelligatur universalis haec secundum intellectum qui ex dicendis infra poterit colligi. Arguo sic: de omni eo intellectus est certus quod est sibi evidens et ultimate evidens vel ipsi secundum actum sensus. Nunc de omni eo quod apparet proprie, qualis apparentia est solum in actu sensuum exteriorum, est hujusmodi, alias non diceretur proprie apparere. Unde de multis judicat [m] intellectus quod sic sunt et eis assentit; quae tamen non dicuntur proprie et potissime sibi apparere [n] quia non sunt ultimate evidentia ut quod Roma est magna civitas, sed videnti qui esset in Roma esset evidens et omnino clarum.

Nunc etiam presentetur cibus quem dicis dulcem febricitanti; est omnino sibi evidens in gustando quod illud quod gustat est amarum; non dico quod ille cibus sit amarus, sed aliud quod gustat. Aliquis videt rubedinem ubi dicis albedinem esse; dico quod est sibi clarum et evidens rubedinem esse et sic in aliis. Ista minor est de actibus experientiae; hoc experior in me. Dicet aliquis volens tollere vel diminuere probabilitatem conclusionis propositae quod illa ratio non concludit ad majorem: de illo intellectus est certus quod est sibi ultimate evidens. Verum est suppositis tribus: debita dispositione medii, organi et distantiae inter potentiam et objectum. Contra: illa responsio non est bona quae tollit ab intellectu certitudinem super rebus; ista est hujusmodi quia non est magis impossibile quod evidentia de convenienti dispositione stet cum non esse, ita quod sit ultimate evidens quod potentia sit bene disposita, et tamen non sit quam quod sit ultimate evidens rubedinem esse et tamen non sit rubedo. Sed illa evidentia potest stare cum non esse per te; ergo et alia et ita omnes istae evidentiae erunt apud intellectum de objecto de convenienti dispositione medii et organi et debita distantia, et tamen non erit certitudo intellectu. Dico igitur quod haec conclusio est probabilis, quod omne illud quod apparet proprie et ultimate est, et quod apparet esse verum

[m] Ms. indicat. [n] Ms. appēt.

[162] Cf. IV *Phys. tx. com. 84;* cf. *Zimara, Tabula Dilucidationum, 342*^{r}.

[163] Cf. p. 234.

est verum. Pono istam conclusionem ut probabiliorem opposita non ut veriorem.

Contra hanc conclusionem sunt dubia. Primo quidem videbitur sequi quod omnia sint vera et omnia sint falsa. Dico hoc inconveniens non sequi, propter quod praemitto quod non omnis actus virtutis comprehensivae est apparentia objecti; unde ut praemissum est alibi,[164] intellectus habet actum judicandi et assentiendi ⟨*circa ea*⟩ quae non tamen sunt apud se in apparentia, etiam loquendo de apparentia improprie dicta ut quod Roma est magna / civitas ei 14r qui judicat et assentit [o] isti complexo et tamen non vidit Romam. Verum est ergo si diceremus: omne quod judicatur verum esse verum, vel cui intellectus assentit, sequeretur illud quod dicis; sed sic non dicimus, sed solum est sermo noster de actu apparentiae.

Et advertendum quod aliquando sic contingit quod intellectus habet illud in ratione apparentiae circa quod est actus judicandi, sed non totum illud ut cum aliquis videt solem ut infra dicemus[165] illud quod apparet sibi est minus tota terra. Nunc quia sequitur totaliter visum, judicat quod ibi nihil est praeter illud quod videtur, et ita enuntiat quod totum illud, quod videtur, movetur ab oriente in occidentem est minus tota terra; et ita illud objectum circa quod est actus judicandi est apud intellectum in ratione apparentiae, sed forsan non totum de quo alias plenius inquiretur; et sic est falsitas in actu judicandi licet non sit in actu apparentiae.

Occurrit secundum dubium quod est Achilles apud adversarios; nam in somno alicui apparet quod volat per aërem vel quod est ultra mare ubi pugnat cum Saracenis. Dicerem sic praemittendo aliquid de his quae experimur in vigilia, nunc ad imperium meae voluntatis venit complexio quaedam objectorum apud animam ut quod pater meus volat, ita quod aliquo modo in ratione apparentiae est illud complexum, et verum est dicere quod apparet mihi complexum, sed non apparet mihi veritas complexionis, sed appareret [p] si pater meus esset hic praesens et realiter volaret et apertis oculis defigerem aspectum [q] in eum. Unde ex tali apparentia sequitur solum quod illa complexio sit ad intra in formis exemplaribus, sed non sequitur quod sit vera, id est, quod sic existat in re; nam talis conformitas ad rem extra non est nata esse in apparentia proprie nisi per extremum secundum quod magis attenditur, puta secundum quod res actualiter existunt in se et ut cognitae per sensus exteriores. Sed dices: nedum in somno apparet mihi talis complexio, sed etiam apparet mihi esse vera. Die [r] solum apparet complexio et judicium sequitur veritatem propter latere alios conceptus qui debent rectificare potentiam judicando ad quos natum est sequi judicium rectum si sit apparentia.

Et quod in somno non sit apparentia clara apparet; nam quantumcumque alicui apparuerit in somno se vidisse castra, lumen caeli etc., tamen quilibet experitur in vigilia quod illa apparentia quam habet per visum est magis clara et quod est alterius rationis, et ita magis trahitur per istam. Si enim essent aequaliter clarae, vel deberet dicere sibi esse nihil certum, vel concedere esse verum illud quod apparet esse verum in utraque apparentia. Nunc in illis apparentiis de quibus dixi quod sicut apparet sic est sunt apparentiae omnino clarae ut quando inspicienti per tale medium apparet rubedo, ita quod apparet clare quod nihil apparet sibi clarius. Ideo in majore rationis adductae pro conclusione quae est posita ponebatur: clarum et evidens ultimate.

[o] Ms. ssentit. [p] Ms. apparet. [q] Ms. aspectam. [r] *Read* dic?

[164] Cf. p. 228. [165] Cf. p. 231.

Ex praedictis igitur videtur probabilis conclusio proposita ut licet actus judicandi et assentiendi stent [s] cum falsitate, actus ultimate apparentiae non, et quare sicut de aliis esset una persuasio quia apparentia talis est principium fundamentale omnis veritatis scitae a nobis; et ita tolleretur certitudo si sic esset quod staret cum non esse; sed non sic in actu judicandi qui, etsi quando sit falsus, poterit judicium quodammodo rectificari per istum actum.

Occurrunt alia dubia quae sunt facilioris solutionis ut de febricitante cui apparet cibus amarus qui dulcis. Dico ut supra [166] quod apud sensum gustus sunt aliqua exemplaria quibus in re correspondent alia talismodi puta in organo. Est etiam aliud dubium tactum supra [167] de rubedine quae videtur ubi objectum dicitur esse album. Dico quod ibi sunt aliqua atomalia quorum exemplaria nata sunt venire ad animam organo vel medio sic dispositis. Instatur etiam de sole; dico quod illud quod apparet est minus tota terra. Imagineris igitur quamdam lineam diametraliter protractam ab oculo tuo usque ad solem et circa punctum illius lineae in sole quamdam modicam circumferentiam circularem, habebitur quod videtur.

Probabile igitur est quod omne illud quod apparet est verum, scilicet quod est clarum et evidens in pleno lumine; alias [t] enim non esset [u] certus de quoquam intellectus quoniam de nullo intellectus potest se dicere esse certum nisi illud experiatur in se vel ex experientiis suis concludatur sicut sunt illa quae ad experientias suas consecutione naturali consequuntur. Ista apparet; de nullo enim intellectus est certus secundum quod existit in tenebris sed secundum quod existit in lumine; igitur vel oportet quod illud de quo intellectus est certus vel sit ipsummet lumen sicut sunt experientiae nostrae vel sequatur ad ipsum lumen sicut illa quae consecutione naturali vel via abstractionis concludimus ex experientiis nostris.

Amplius quaero ab eo qui dicit se esse certum an sit penes ipsum aliquod lumen vel aliqua apparentia in quo lumine vel apparentia dicit se esse certum aut non; ⟨*si non*⟩, igitur est in tenebris et sicut caecus loquitur; si sit aliquod lumen vel apparentia, tunc illud de quo dicit se certum vel ipsum est lumen vel ipsius est lumen, et tunc semper experitur in se vel in suo lumine, vel illud, de quo dicit se certum, consequitur ad alterum vel habet habitudinem. Si enim non haberet habitudinem aliquam ad illud de quo dicit se certum, ipsum lumen esset quasi in tenebris totaliter quantum ad illud, et sic quasi caecus de illo non esset certus; si habeat habitudinem, quod oportet dicere, vel igitur habitudinem contingentem et indifferentem ad esse et non esse, et tunc per illud lumen seu apparentiam non poterit dicere se esse certum quia sicut diceret se certum de esse, sic posset de non esse. Igitur oportet quod habeat habitudinem necessariam, et si sic, poterit concludi per modum conclusionis; nam dato uno et inexistente videntur inexistere omnia quae necessario sequuntur. Igitur istud est verum, quod nullus potest dicere se esse certum de aliquo nisi habeat lumen illius vel alicujus ad quod [v] consequatur necessario. Et propter istam propositionem alias dixi quod nullus potest dicere quod in corpore [w] praeter trinum dimensionem sit aliqua realitas per modum fundamenti sicut dicunt illi qui ponunt quantitatem distingui a substantia materiali. Et ratio est quia nec illa realitas habet aliquod lumen penes intellectum in quo experiatur ejus existentia; non enim vidimus eam vel audivimus neque ex visionibus nostris vel aliter quocumque modo sensatis potest concludi inexistentia talis realitatis ut alias dictum est.[168]

[s] Ms. sten. [t] Ms. Aristoteles? [u] Ms. esse. [v] Ms. aliquod. [w] Ms. opere.

[166] Cf. p. 228. [167] Cf. *ibid.* [168] Cf. p. 222.

Juxta ergo / hanc imaginationem potest dici probabiliter quod si homo de aliquo possit dicere se esse certum, illud quod apparet proprie et ultimate est verum. Et dicamus hanc regulam per alia verba: omnis actus dicendi formatus in pleno lumine, quantum lumen potest esse plenum apud hominem, est verus; nam omnis actus mensuratus secundum suam veram regulam est verus; sed actus dicendi formatus in pleno lumine est mensuratus secundum veram regulam, scilicet lumen plenum; nihil enim certitudinaliter possumus enuntiare nisi relatione luminis vel apparentiae quae penes nos sunt. Ista quidem habent rationem mensurae et principii ut satis visum est hic supra.[169] Neque valeret ut supradictum est si diceretur quod lumen plenum non habet rationem mensurae simpliciter, sed concurrentibus tribus, scilicet debita dispositione organi medii et debita distantia objecti; nam a sic dicente quaero duo: primo unde est certus quod illa requiruntur; non poterit dare pro vero medio nisi apparentiam vel lumen suum, et ita negando propositum concedet propositum. Item quaero ab eo qui dicit se esse certum, an sciat quod illa tria concurrunt, quod potentia sua sit bene disposita etc. Non potest praetendere verum medium nisi quia sic apparet sibi; igitur oportebit semper reverti ad negatum ab eo, scilicet quod apparentia plena absolute sumpta semper est vera; et actus dicendi factus secundum eam semper est verus. Dictum est autem lumen plenum quia lumen non plenum ⟨*non*⟩ habet rationem mensurae, propter quod frivole arguunt dicentes: apparet dormiendo me currere per castra vel esse in caelo et tamen ita non est. Respondeo: non apparebat tibi apparentia plena; nam apparentia plena veritatis hujus propositionis est apparentia sensuum exteriorum quando per visum vides motum; sed sciendum propter quaedam alia quod aliquando dicitur videri res in suo proprio lumine, aliquando in lumine sui imaginis ut cum homo videtur in speculo. Nunc dico quod omnis actus dicendi secundum[x] lumen ita quod ipsum non egreditur est verus. Et ideo quando videtur sol dicunt aliqui quod sensus decipitur quia major est tota terra, et tamen videtur esse bipedalis quantitatis. Mirabile est de sic loquentibus; si bene considerarent quid loquuntur viderent quod loquitur in tenebris vel nobiscum consentirent; nam dicunt quod totus sol est major tota terra et dicunt quod illud quod vident in apparentia sua est solum unius pedis. Quomodo stabit hoc quod totus sit in apparentia sua et quod in apparentia sua non sit nisi unius pedis? Dico igitur quod videtur a nobis in lumine sui imaginis; unde unam imaginem videmus quae est imago solis qua visa sol dicitur quodammodo videri et in illa non representatur magis una pars quam alia. Unde ibi representatur extensio solis solum per modum configurationis quantum ad figuram, substantiam et lumen; non tamen ibi representatur per modum coaequalis quantitatis. Et ex isto volunt aliqui sumere argumentum apparens ad probandum quod quantitas distinguitur realiter a substantia et figura, cujus solutionem nunc obmitto. Sufficit enim mihi ad praesens quod ibi est actus dicendi verus referens se ad imaginem quae est minor tota terra. Idem responderetur de baculo qui appareret fractus in aqua, et dico quod apparitio est ad quamdam imaginem quae est talis dispositionis sicut apparet. Et idem dicerem de motu ripae qui apparet existenti in navi. De febricitante cui dulcia videntur amara potest dici ut supra[170] quod hoc est ratione quorumdam existentium in organo gustus quae sunt amara quantum ad veritatem. Unde istae objectiones parum movent ad contrarium, sed longe plus movet ista quia, secundum quod dictum est de lumine imaginis, sequeretur quod nullus 14^{v}

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[x] Ms. suum.

[169] Cf. p. 230.

[170] Cf. *ibid.*

posset dicere de existentia vera subjectiva albedinis vel alicujus rei. Non enim potest dicere nisi per suam apparentiam; nunc dicetur quod illa apparentia terminatur ad imaginem rei et non ad aliquid existens subjective in re extra. Dicendum quod immo visus videns albedinem quod aliquid videat certum est. Hoc dicit sua apparentia et quod est extra oculum et in tali loco; et concedo quod haec omnia sunt vera. Nunc quando non mutatur visio ad quodcumque se divertat et quomodo existens et realiter illud sibi apparet imponit illud nomen et dicit quod ibi est vera albedo habens esse fixum vel subjectivum; quando non sic imponit nomen et appellat[y] illud imaginem sicut quando homo videtur in speculo vel quando homo videt ripam moveri, alibi existens non videret ipsam moveri, esto quod plenissime videret eam, sed quod sit aliqua differentia inter imaginem et illud quod vocat rem fixam, non est aliquo modo certus, immo in apparentia sua est quod nulla sit differentia nisi secundum numerum. In tactu vero non sic videtur esse causa dubitandi; nam non videtur esse aliquando ad imaginem, sed semper ad rem fixam. Sed per dicta supra videretur quibusdam tolli certitudo sicut per dicta aliorum; nam secundum supra ad probandum aliquid esse non sufficeret dicere: apparet mihi esse verum, ergo est verum, quia in somno apparet aliquid quod non est verum; sed oportet assumere illud quod apparet in pleno lumine.

Nunc de minore hujus rationis qualiter eris certus? Si dicas quod apparet tibi absolute; igitur habebo quod apparentia absolute debet assumi ut medium ad concludendum; si dicas quia apparet in pleno lumine, revertetur quaestio ut prius. Unde in somno apparet clarissime quod videam aliquam personam, et tamen non video. Ad hoc esset unus modus dicendi quod nullum esset medium ad probandum conclusionem, sed conceptus certitudinis, qui habetur, habetur consecutione quadam naturali non per modum conclusionis. Exemplum in aliis quod albedo et nigredo distinguantur; iste conceptus distinctionis non accipitur per modum conclusionis; nam si diceretur: albedo et nigredo distinguuntur, probo quia actus videndi distinguuntur esse probare per ignotiora. Iterum reverteretur quaestio super actibus videndi, et ibi saltem oporteret concedere propositum. Sic dicam in alio casu puta in somno; dico quod non; nam in vigilia mihi apparet quod ego possum bibere, loqui, audire etc., et quod hoc est intransmutabiliter et quiete et ex talibus multis apparentiis innascitur conceptus certitudinis; non sic in alio casu. Et forsan finaliter oporteret quod non habemus plenam certitudinem de rebus, immo solum eam habet intellectus primus qui est mensura omnium intellectuum.[z]

Diceremus enim unum[a] juxta[a] istam materiam quod apud homines contrarietas quae videtur accidere non est concernens ipsam apparentiam; nam opposita non apparent hominibus; sed verum est quod non eadem apparent, immo isti unum, alii aliud et interdum uni plura, alii pauciora. Contrarietas igitur concernit actum dicendi, verbi gratia, si dicat / aliquis quod melius est 15r vivere in deliciis corporis quam philosophari, solum tali apparet hoc quod delectationes corporales veniunt ut majores sibi in apparentia; alius vero qui dicit contrarium concernit opus in se magis ut praescindit a delectatione et similiter operationem tactus, et apparentia venit quod hoc sit melius illo; sunt igitur contrarii in actu dicendi, sed non in actu apparentiae. Similiter si quis negaret numerum praedicamentorum, diceretur sibi communiter: tu negas principia prima; alius diceret: non. Primo apparet solum istud quod ille negat illa quae sunt habita pro[b] primis principiis et nihil sibi plus apparet; alius considerat quod esse decem praedicamenta non est propositio per se nota ex

[y] Ms. appella. [z] Ms. intellectuium. [a] Ms. iiiiixta? [b] Ms. quod.

terminis, et utrique verum apparet. Et quod actus dicendi egrediatur sic terminos apparentiae non est nisi ex malitia intellectus; nam semper intellectus bonus adaequatus est mensurae suae et ille inter homines est melioris intellectus qui melius scit omnes suos actus dicendi reducere in suam primam mensuram, scilicet in apparentia vel lumen inexistens. Et consideratio in disputantibus erit ad scientiam super altera duarum rerum, vel in reducendo actus dicendi in suas mensuras vel in multiplicando apparentias. Et in primo indiget volens reducere alium ut manifestet sibi motiva sui sermonis; in secundo debet manifestare apparentias suas et omnino induere figuram opponentis. Quid cum sequatur assensus ubi actus dicendi egreditur terminos suae mensurae? Et magis credimus per perfectiorem causam ut cum aliquis proponit quod delectationes corporales sunt eligibiliores, in apparentia sua est ipsa delectatio; et ipsa est bonum ut praescindit ab opere ut alibi diximus,[171] et ideo licet dicat hoc de opere; assensus tamen sequitur apparentiam quae est circa delectationem ipsam, et ita secundum hoc in vigilia nisi phreneticis vel simili dormienti vera apparent, et veris assentiunt, sed non semper vera figurant quia interdum actus dicendi suos egreditur terminos.

Videtur inducere contrarium consideratio hujus quod dictum est supra; nam relatione facta ad idem, verum est quod delectationes tactus apparent illi majores quam intellectuales; alicui alteri apparet contrarium. Et sermo dissolutionis erit dicere quod diversa istis aliqualiter apparent, sed non contraria neque impossibilia. Ei autem qui dicit quod delectationes tactus sunt majores quam delectationes intellectus, dicemus quod verum dicit habita relatione ad illud quod sibi apparet; sed subjunctio complementi sermonis erit quod delectationes intellectus non perveniunt ad ipsum in suo pleno esse, sed in eo quod habet de eis esse diminutum; alteri apparet simpliciter absque tali diminutione. Et recipe ut congruens isti rei illud quod dicit Aristoteles in 2 *Pol.*[172] de illis qui volunt omnino et continue delectari quod non nisi ad philosophiam quaerent remedium si possint per ipsam gaudere.

Et est tertius modus super causa alterationum contingentium inter homines diversitas in assensu; nam stante aequali apparentia apud duos, sequitur assensus in uno et non in alio vel non sic firmus ut quod Roma sit magna civitas. Pone unus credit firmiter, alter non; utrique tamen idem apparet, scilicet quod hoc est vulgatum nec in hoc est contradictio; non aliquo vel forsan in hoc accidit correctio ut dicatur quod aequali apparentia posita sequitur aequalis assensus, sed non credendi de isto, licet appareat quod vulgatum sit; hoc tamen actualiter sibi apparet quod non est necessitas connexionis propter quod non firmiter credit. Aliquando vero contingit quod licet apparentia sint et quodammodo inexistant ad oppositas conclusiones, tamen insistit consideratio circa unum apparentium et non circa aliud ut cum proponitur de duabus albedinibus similibus an habeant aliquam unitatem in natura rei; apparet hoc quod veniunt ut omnino unum apud sensum quantum est de se, ita quod non habita consideratione loci numquam intellectus distingueret. Ad quod apparens aliqui respicientes enuntiant quod ibi est aliqua unitas in natura rei; alii considerant quod unum non potest esse in pluribus locis et quod unum illorum corrumpitur altero remanente. Ad quod considerantes enuntiant quod ibi non est aliqua unitas ex natura rei. Et quidam alii considerantes enuntiant quod ibi [non] est aliqua unitas ex natura rei. Et quidam alii considerantes omnia talia apparentia dicunt quod conclusio haec apud homines debet recipi ut neutra, id est, non subjacens determinationi hominis, et quod non est locus in hoc plenae [locus] dissolutionis apparentium. Quicquid de istis? Teneo ut supra quod quicquid apparet in pleno lumine est verum et quod hominibus in pleno lumine non possunt contraria apparere; nam alias oporteret arguentem recipere hoc pro medio: omne illud quod apparet mihi est verum, et non illud: omne quod apparet est verum; nam si hoc reciperet et diceret contraria posse apparere, deduceretur impossibile quod contraria essent simul vera.

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[171] Cf. p. 234.

[172] Cf. 1267 a 12.

Et hic considerandum; videretur enim aliquibus forsan non magnum bonum esse habere notitiam rerum eo quod dictum est de ipsis non habere nos plenam certitudinem. Et responsio in hoc esset quod esto quod sic sit, non multum obstat; nam certum est quod sunt aliquae configurationes et aliqua lumina cujuscumque objecti sint; non multum refert nisi quod secundum hoc remaneret desiderium non terminatum super notitia rerum. Et circa hoc considera quod praeeminentia intellectus unius supra intellectum alterius est secundum alterum duorum dictorum supra modorum, vel quia plures habet apparentias circa res et magis subito sibi occurrunt, vel quia magis reflectit supra suas apparentias, nec faciliter exit ad actum dicendi.

Et sicut diximus quod quidquid apparet est verum, idem secundum similitudinem quamdam [c] dicendum est de voluntate ut quidquid appetit appetitus est bonum simpliciter non apparens bonum tantum; nam sicut medium probandi aliquid esse verum est ipsa apparentia, sic suo modo medium probandi aliquid esse bonum ex parte appetitus est ipse actus appetendi. Et ne relinquatur locus dubitandi si fiat oppositio quod aliqui appetunt furari, alii interficere seipsos, alii delectationes corporis, eis respondebimus quod appetitus non est ad ista per se, sed solum ratione adjuncti, saltem in duobus primis; nam si interficere vel furari praescinderetur ab omni posteriori, priori et concomitante, numquam ad ipsa esset appetitus. Sed ad furari concomitatur habitio pecuniae et certe habere pecuniam ad conservationem sui esse est bonum. Similiter patientes tristitias multas ⟨*se*⟩ interficiunt appetentes fugare tristitias quod est bonum, et sic in aliis. De delectationibus corporis utpote tactus dicemus quod, si delectatio / praescindatur ab omni eo quod non est 15^{v} delectatio, est bonum; sed ipsum non est bonum quia si praescinderetur a delectatione nullus ipsum appeteret nisi esset propter generationem vel aliquid concomitans, et sic apparet quod illud quod appetitur est bonum quemadmodum illud quod apparet est verum modo supra exposito.

Considerandum siquidem quod interdum homines recipiunt pro evidentibus multa quae non sunt evidentia sibi ut accipiendo unum pro alio ut aliquis accipit pro evidenti quod adveniente nigredine albedo non est, et tamen hoc non est sibi evidens, sed solum hoc non apparet visui et prius apparebat. Alii recipiunt aliqua ut evidentia quia famosa sunt; aliquando [d] dicunt aliquod totum esse sibi evidens quod tamen non est evidens sibi nisi partialiter ut aliquis enuntians unam universalem quam accepit solum per inductionem in quibusdam singularibus dicit interdum sic proponens: hoc est mihi evidens, et tamen nihil est sibi evidens nisi illae propositiones singulares in quibus induxit nec etiam adhuc est evidens illi quod illa singularia sint ejusdem rationis in ordine ad praedicatum. Alio modo dicit aliquis aliquid sibi esse evidens virtute cujusdam signi deficientis ut dicunt: scimus quod talis operatur propter vanam gloriam, et tamen nihil est eis evidens nisi unum signum multum contingenter se habens ad conclusionem; sed quia anima eorum nata est detrahere, accipiunt consecutionem contingentem quasi sibi esset evidens et necessaria. Et qui vult habere evidentiam in consecutione non oportet nisi reducere ad forman sillogisticam quia illa est evidens; et tunc si praemissae sint sibi evidentes, et conclusio, ut dependebit ex praemissis, erit sibi evidens.

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[c] Ms. quam de.

[d] *Read* alii?

Aliquid vero est quod non est evidens directe, sed accipitur quia ejus oppositum non est natum venire in apparentia ut si mundus non fuerit ab aeterno quare plus incepit in isto nunc quam in alio. Haec vero proprie sunt evidentia: objecta sensibilia, actus quos ⟨*experimur*⟩ in nobis, et hoc quantum ad incomplexa; quantum vero ad complexa principia nota ex terminis et conclusiones dependentes ex eis.

Ex supradictis igitur potest nobis faciliter apparere quid intelligatur per certitudinem; hoc enim nomine per certam cognitionem respectu alicujus complexi, ejus enim quid nominis, utuntur homines sic: cum aliquis habet cognitionem claram et evidentem complexi quod sic habeat et etiam percipit se habere talem cognitionem claram et evidentem, tunc dicit quod est certus; igitur certitudo importat talem cognitionem ita claram alicujus complexi. Et tali modo investigandi "quid nominis" usus est Aristoteles 1 *Post.*[173] cum dicit: scire autem opinamur unumquodque etc.; sed quaeres: quid intelligis per cognitionem claram et evidentem? Respondeo: vide qualis potest fieri hic ostensio. Si quaeras: quid intelligis per colorem?, respondebitur forsan: illud quod videtur; et si quaeras: quid intelligis per "videre?," istud quid nominis ostenderetur ignoranti per apparitionem oculorum ejus, vel sibi dicendo quod defigeret aspectum suum ad aliquid vel respiceret me defigentem; ecce! sibi dicerem: hoc appello videre; unde meliori modo non posset sibi ostendi.

Sed quid de actibus animae qui sunt signabiles minus? Ut in proposito, quid intelligis per cognitionem claram? Dico quod utar aliquibus conceptibus colateraliter et tandem apud intellectum sic dispositionis quod acceptus illius perveniet quod per cognitionem claram et evidentem intelligitur, verbi gratia sic utor hoc termino; nam dico me habere cognitionem claram et evidentem de primis principiis, de conclusionibus quae concluduntur ex eis, etiam de actibus nostris ut quod ego loquor nunc, et sic de aliis. Et universaliter quando trahitur intellectus ad assentiendum omnino propter cognitionem, tunc dicitur habere cognitionem claram. Dico enim quod cum trahitur ad assentiendum propter cognitionem quia assentit multis complexis, et tamen illa non sunt sibi cognita seu evidentia ut quod Roma sit magna civitas et de aliis ut dictum est supra. Quando igitur venit aliquod complexum apud intellectum alicujus clare et evidenter, tunc dicitur ille habere certitudinem, ita quod quando aliquis percipit claritatem suae cognitionis, tunc dicit certitudinaliter: ita est.

Juxta ista ponam[e] primam conclusionem quod si de aliquo intellectus possit dicere: hoc est verum, oppositum illius quod clare et evidenter cognoscitur non potest inesse, ita quod universaliter et conversive quicquid est clarum et evidens intellectui est verum. Probatur haec conclusio; nam si ita esset quod cum cognitione clara et evidenti possit stare oppositum illius quod venit in cognitionem, sequeretur quod de nullo intellectus posset esse certus, cujus oppositum retinebatur in hypothesi. Probatur consequentia quia nec de primis principiis nec de quibuscumque cognoscibilibus habemus certitudinem nisi quia clare et evidenter ea cognoscimus. Unde nullum actum experimur nos habere circa principia nisi cognitionem claram. Quod si dicas: habemus cognitionem claram talem, dicemus quod, si gradus requiretur cum sit incertus et

[e] Ms. pono an.

[173] Cf. 71 b 9.

indeterminatus, esset nobis incertum et indeterminatum quando habemus veritatem. Sed dices, ut aliqualiter tactum est supra,[174] quod secundum praedicta contradictoria erunt simul vera; nam aliqui sunt qui ponunt contradictorias conclusiones. Et hic dicemus quod plus oporteret in argumento apponere ut diceretur quod cuilibet esset clarum, clarum et evidens de sic esse ut asserit. Sed dices: hoc non valet; nam quilibet eorum judicat omnino sibi esse clarum et evidens sic esse, et per hoc trahitur ad assensum. Unde si cum tali posset stare oppositum, tunc argues ut prius arguebamus, scilicet quod ⟨*de*⟩ nullo erimus certi; nam nec de primis principiis dicimus nos habere certitudinem nisi [f] quia judicamus omnino esse clarum et evidens sic esse. Et hic dicendum est quod tenentibus oppositas conclusiones aliquid est utrique clarum, sed non in illo vel in illis contradicunt, sed interdum utuntur uno pro alio ut supra dicebatur,[175] verbi gratia, et hoc vidi frequenter accidere de facto. Aliquis loquitur; sunt aliqui qui audiunt; interdum unus dicit: ille dixit hoc, et in veritate illud non dixit; et alius dicit: immo dixit hoc. Et pone quod sic sit, tunc isti dicuntur sibi contradicere, et tamen secundum veritatem opposita non veniunt in evidentia apud intellectum eorum; nam primo qui dicit me dixisse aliquid quod non dixi, non est sibi evidens quod illud dixerim, sed est sibi evidens quod me loquente conceptus illius rei venit ad intellectum ipsius, et forsan vel ex modo meo lo/quendi vel quia expressum a me erat 16^{r} propinquum illi in quod incidit; etiam est sibi evidens quod ego aliquid dixi et quod movi labia, sed non est sibi evidens quod ego dixerim illud; utitur ergo uno pro alio. Sed dices adhuc: secundum istum modum respondendi sequeretur quod intellectus de nullo specialiter posset dicere se esse certum, licet de aliquo posset in genere; nam secundum te intellectus potest uti uno pro alio et ita omnino judicabit aliquid esse clarum, et tamen illud non erit sibi clarum, sed quoddam aliud de quo non judicabit. Et si dicas quod aliquis habebit certitudinem, sed carebit omni medio per quod probare posset sibi vel alii se esse certum, quia ille gradus cognitionis, cum quo non potest stare oppositum, non est sic determinatus ut possit sciri, sequitur: hic est, hic non est. Et secundum hoc responderetur ad rationem quam supra adduxi [176] ad probandum quod omne illud quod est clarum et evidens intellectui est verum applicando responsionem positam ad ipsum argumentum. Et sic apparet quod illa conclusio nondum fuit probata sufficienter. Aliquis ergo erit secundum hoc certus, sed nullus sub certo diceret [g] se esse certum. Sed contra hoc arguo, quia nedum videtur quod sim certus, dicendo quod omne totum est majus sua parte, sed etiam videtur quod ego sim certus de hoc complexo.[h]

Respondeo igitur aliter ad rationem suprapositam: nullus erit certus de aliquo speciali determinate quia erit sibi incertum an accipiat unum pro alio. Dico quod tunc erit certus quando habito quid nominis terminorum illud est sibi clarum et evidens, ita quod omnino trahitur nec potest resilire et maxime quod omnino illud est quod venit in cognitionem suam. Audienti enim alterum non est omnino clarum quod sic dixerit; si quis enim diceret: numquid potest esse quod iste dixerit unum, et aliud venerit ad intellectum vestrum? Sic utique diceret, et ita non apparet quin conclusio supraposita possit teneri, scilicet quod illud quod est clarum et evidens intellectui, ita quod non potest resilire, et propter ipsam naturam visionis, illud est verum. Et apparet propter quid hujus conclusionis quia sicut gustus non est natus maxime delectari in amaro, sic nec intellectus in falso, praecipue quia falsum est malum intellectus.

[f] Ms. non. [g] Ms. dicere. [h] Ms. complexio.

[174] Cf. p. 229. [175] Cf. p. 234. [176] Cf. p. 228.

Ex dictis infertur secunda conclusio quae est quod illa conclusio quae est probata ex hypothesi, suppositum quod aliquid sit verum, debet assumi ut principium; nam si probaretur esse vera, tunc vel assumerentur praemissae ut evidentes vel ut verae; si ut evidentes tantum, tunc licet redderent conclusionem evidentem; non tamen eam esse veram probarent; si ut verae quaero, vel per se quia evidentes sunt et hoc esset [1] petere principium, vel quia verae sunt, et tunc oporteret quod illud ostenderetur ex aliis et sic in infinitum.

Tertia conclusio est quod non est principium sub principio quantum ad probandum ipsam esse veram; quod probari potest ut praecedens conclusio.

Quarta conclusio est quod non videmur habere plenam certitudinem de rebus ex quo oportet assumere illud pro medio quod licet sit evidens, tamen quietatur intellectus in illa consequentia qua dicitur: est evidens, ergo verum.

Quinta conclusio est quod quantum ad rationem evidentiae non est primum principium, immo potest fieri aliqualiter evidens ista conclusio quia malum non videtur quietativum intellectus etc. ut supra.

Sexta conclusio est quod nulla conclusio potest probari esse vera nisi per medium evidentiae; hoc est quod probetur esse evidens per propositiones evidentes.

Septima conclusio est quod illa non potest probari esse vera qua nihil evidentius.

Octava conclusio est quod non omnes propositiones possunt ostendi esse evidentes per primum principium; nam cum primo principio oportet assumere aliquid quod contineat conclusionem in actu; minor non, quemadmodum major et principium primum, videlicet in potentia.

Nona conclusio est, quod aliquis posset per consuetudinem aut alias resilire, ut non assentiret indubitanter ei, quod est primum principium esse verum utpote, si sic nutriretur, ut sibi diceretur, quod est aliquod agens omnipotens, quod potest facere contrarium et quod non debet ipsum movere evidentia, quia oppositum potest stare cum ea ut declararetur in multis.

Decima conclusio est quod non posset non assentire quin esset sibi clarum et evidens.

Undecima conclusio est quod sicut accipimus illud quod est omnino evidens esse verum, ita suo modo accipimus quod illud quod ⟨*non*⟩ potest venire in evidentiam non potest esse verum, et in hoc distinguimus possibilia et impossibilia.

Duodecima conclusio est quod ille haberet certitudinem plene qui cum hoc quod esset sibi evidens, complexio esset sibi evidens: hoc est mihi evidens, igitur hoc est verum.

Tertia decima conclusio est quod de scitis per experientiam illo modo quo dicitur sciri rheubarbarum sanat choleram vel adamas attrahit ferrum, habetur solum habitus conjecturativus, non certitudo, cum probatur quod certitudo per propositionem quiescentem in anima quae est illud quod producitur ut in pluribus a causa non libera est effectus ejus naturalis; quaero quid appellas causam naturalem; vel illam quae produxit praeteritum ut in pluribus et adhuc producet in futurum si duret et applicetur? Et tunc minor non est scita, esto quod aliquid sit productum ut in pluribus; non est tamen certum an sic debeat esse in futurum.

Quarta decima conclusio est quod omne illud quod est evidens sensibus exterioribus est verum, si aliqua certitudo habeatur de talibus objectis.

Quinta decima conclusio est quod illud quod apparet in somno est verum ut apparet ad intra, scilicet in formis exemplaribus; in vigilia vero experitur aliam evidentiam et inter alia objecta.

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[1] Ms. esse.

Sexta decima conclusio est quod sicut non omnis propositio potest probari esse evidens per illud quod dicitur primum principium ut dictum est, et propositionem non dicimus impossibilem nisi illam, quae non potest venire in evidentiam nostram, quod sunt aliqua impossibilia quae non possunt resolvi in primum principium, ita quod evidentia impossibilitatis ostendatur per illud, saltem illud non est certum.

Septima decima conclusio est quod ad hoc quod sciamus nos vigilare vel loqui vel aliquid tale non est necessarium ut sciamus potentiam esse bene dispositam quia illud est magis latens quam prius, nec apparet qualiter deberet sciri nisi per actum sensus. Item hoc scito, non haberem nisi evidentiam; si igitur habeo eam nunc ita claram sicut tunc, vel nullus est certus, vel hic erit.

Duodevicesima conclusio est quod non omne carens summo gradu evidentiae est probabile; hoc apparet per unam / suprapositam quia non omne 16v
infra primum principium est probabile per ipsum.

An Res Eadem Omnino Possit Videri Clare et Obscure

ET UT circa materiam de apparentibus possimus plura videre, propono hoc problema an res eadem omnino possit videri clare et obscure. Videtur quod sic; nam quando duae res concurrunt circa idem objectum vel passum semper circa illud [j] passum perfectior habebit perfectiorem actum. Hoc antecedente videtur sequi conclusio proposita, et hoc recipitur ut certum apud omnes nec in hoc est inventus contradictor. Contrarium tamen mihi videtur esse verum secundum rationem naturalem qua participamus pro praesenti statu; nam sic nunc et in sequentibus habeo loqui.

Est igitur conclusio prima quod cognitio clara et obscura numquam possunt esse respectu ejusdem rei. Et ad hoc ostendendum recipio duas albedines quarum [k] una sit clara et alia obscura; prima dicatur *a*, secunda *b*. Nunc recipiatur actus videndi *a* et sit *c*, et actus videndi *b* et sit *d;* certum est quod *c* erit actus magis clarus quam *d* sicut *a* est albedo magis clara quam *b*, cum actus sit configuratio quaedam objecti in intellectu. Quando igitur a remotis videtur albedo *a*, vel videtur quasi in tenebris recedente lumine sicut circa noctem, certum est quod habet actum videndi obscurum *d*. Tunc arguitur sic: pro quocumque instanti est in visu actus videndi alicujus objecti videtur illud objectum; et pro quocumque instanti non est in potentia actus videndi alicujus objecti non videtur illud objectum; sed pro hoc instanti per positum est in visu actus videndi *b*, scilicet *d* et non actus videndi *a;* ergo videtur albedo *b* et non albedo *a*, vel si videtur, hoc non est nisi quia videtur albedo *b* quae est aliquo modo eadem sibi et quasi in ipsa continetur evidenter.

Amplius declaratur sic procedendo ex eadem radice; pone quod quidam alius videt albedinem obscuram; habebit actum videndi *d*, et ille habet actum videndi *d;* similiter tunc sic: potentia habens aequalem actum alteri potentiae videt quidquid videt illa potentia et solum illud; ex quo non habet nisi aequalem actum; sed ille videt albedinem obscuram et non claram; igitur iste similiter se habebit. Item nullus intellectus utens ratione existens sub uno extremo contradictionis debet se mutare ad aliud extremum non inexistente aliqua causa mutationis. Nunc quando iste est quasi in tenebris, apparet sibi nigredo secundum quod judicat; nunc in lumine apparet sibi albedo; nunc ex hoc non habet causam dicendi quod non vidisset prius nigredinem, sed solum potest

[j] Ms. illum. [k] Ms. qua.

dicere quod nunc non videt nigredinem, nisi forsan secundum quod evidenter continetur in albedine. Et sicut dictum est in visu quod visio clara et obscura non possunt esse respectu ejusdem rei, sic suo modo dicatur in aliis potentiis cognoscitivis [l] et propter easdem rationes.

Ex dictis sequitur conclusio secunda quod quidquid concipitur a nobis, quantum clare concipitur a nobis loquendo de primo conceptibili, quantum clare illud idem concipitur a Deo; nam si esset cognitio clarior, jam esset alterius rei.

Et sequitur tertia conclusio quod omnes res aequaliter clare concipiuntur, quaelibet juxta suam obscuritatem, quia secundum quod dictum est, quaelibet res concipitur quantum est conceptibilis et quantum clare est conceptibilis.

Et ex hoc sequitur quarta conclusio quod Deus non distinguitur ab homine in clarius cognoscere res, sed in habendo plures conceptus de rebus.

Sequitur quinta conclusio quod intellectus et visus vel aliqua quaecumque alia potentia sensitiva numquam sunt ejusdem objecti, vel duae potentiae quaecumque quia semper actus unius potentiae vel est disparatus vel est magis clarus respectu ejusdem objecti, et utroque modo sequitur distinctio ex parte rei.

Et in hoc continetur sexta conclusio quod nihil apprehensibile a visu est apprehensibile ab intellectu vel ab alia potentia, et universaliter verum est de una potentia comparata ad aliam.

Deinde potest inferri septima conclusio quod, cum visus videt albedinem absente albedine, intellectus intelligit albedinem, id est, quamdam rem similem aliquo modo albedini, et potest dici quod illa existit in re sicut albedo visa ante omnem actum intellectus, sed numquam est visibilis.

Sed hic est octava conclusio quod harum duarum albedinum albedo visa est perfectior quam albedo intellecta quia magis claritatis [m] habet, et secundum hoc videretur quibusdam quod albedo clara cognoscitur a visu quia comparens duo extrema debet habere notitiam utriusque extremorum; dic quod cognoscit visus aliquo modo in quantum habet cognitionem albedinis talis quae est aliquo modo similis illi objecto, et hoc sufficit; et hic considera.

Nona conclusio est quod ubi est albedo clarissime ibi est omnis albedo inferioris gradus; nam inspiciendo ad illud ubi, paulatim recedente lumine, paulatim potest videri omnis [n] albedo infra illam albedinem, immo etiam nigredo magis poterit videri recedente lumine ubi est maxima albedo, et sic contraria simul.

Decima conclusio est quod habens actum videndi albedinis habet actum videndi omnis albedinis simul omnino; igitur, ubicumque sit, illa albedo videbitur, ita quod videns albedinem quae est Parisius videt illam quae est in Anglia similem omnino; non dico quod videat aspiciendo ad ubi Angliae, sed ad ubi Parisius. Et ubi Angliae et ubi istius loci sunt diversi in specie; ideo actus videndi diversos habent vel distantia quae est ad istum locum et distantia quae est usque ad Angliam.

Undecima conclusio est quae sequitur ex secunda, ex quo concipit intellectus humanus, quicquid concipit quantum est conceptibile de illis quae cognoscit, tantam habet certitudinem sicut Deus; nam aequalis est Deo in radice, scilicet in actibus videndi in complexis per quorum complexionem redditur principium et conclusio.

Duodecima conclusio est quod quot sunt conceptus tot sunt formalitates inexistentes vel realitates; nam plures conceptus vel se habent ad invicem sicut conceptus clarus et conceptus obscurus, et tunc arguunt diversas realitates vel formalitates; vel se habent ad invicem sicut duo conceptus disparati ut conceptus bonitatis et aeternitatis, et tunc multo magis habent arguere diversas res seu formalitates.

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[l] Ms. cognoscimus. [m] Ms.claritas. [n] Ms. omni.

Tertia decima conclusio, quae aliqualiter tacta est, est ista quod tales formalitates "aeternitas" vel "bonitas," si abstrahantur ab omni eo quod inexistit, non sunt conceptibiles nisi uno conceptu et stando ibi neque intellectus affirmaret aliquid neque aliquid negaret.

Quarta decima quae ex praedictis sequitur est quod penes genus et differentiam attenduntur diversae res vel formalitates quia ibi sunt diversi conceptus.

Quinta decima conclusio est quod sunt decem praedicamenta realiter vel formaliter distincta quia tot sunt / conceptus; igitur tot res vel formalitates. 17r

Sexta decima conclusio est quod si sint duo, quorum unus habeat intellectum perfectiorem alio, poterit dicere alii: nullius rei cujus habui notitiam habuisti notitiam, et hoc apparet manifeste considerata prima conclusione.

Septima decima conclusio est quod si unus respiciat aliquod visibile de prope et alius ° a remotis magis, poterit dicere alteri: tu non vides illud quod ego video, et erit hoc verum licet reputare possint se idem videre, eo quod visiones sunt propinquae; similiter de auditu et similibus dicendum est. Et fiat hic regressus super probatione hujus conclusionis, scilicet quod ille qui est prope videat aliud quam ille qui est a remotis. Remanente vero medio alicujus conclusionis nullo alio inexistente tollente naturam medii semper ubicumque ponetur, et conclusio. Sed sic est, cum, si albedo clara et obscura viderentur in diversis subjectis, judicarentur esse diversae, medium judicii essent ipsae apparentiae; non autem consideratio diversitatis situs; nam esto quod non habeatur consideratio istius, adhuc judicabuntur esse diversae. Nunc ista radix, scilicet deformitas in apparentia est circa illud quod dicitur una albedo; nam a remotis videtur magis obscura esse; a propinquo magis clara. Et sic si concurrit identitas situs, ex hoc non potest concludi nisi identitas situalis; non autem identitas secundum quidditatem.

Ex praedictis videretur haec consecutio esse vera: nihil quod videtur intelligitur vel imaginatur, et similiter ista: nihil quod auditur intelligitur et sic in aliis, et convertitur: nihil quod intelligitur videtur vel auditur.

Videretur etiam quod ista esset vera: nihil, quod ego intelligo, Deus intelligit, quia, cum sit intellectus perfectissimus, intelligit secundum conditionem suae naturae. Nunc ut dictum est in prima conclusione per alia verba quod illud quod intelligit intellectus perfectissimus est aliud ab eo quod intelligit minus perfectus, et huic sententiae bene consonat illud quod dicit commentator Averroes in 12 *Meta.*[177] quod illud quod intelligit primus motor de Deo est aliud ab eo quod intelligit motor secundus; et convertetur praesens conclusio conformiter, videlicet quod nihil eorum, quae Deus intelligit, possum intelligere. Similiter de duobus, quorum unus est intellectus perfectioris, potest alter dicere: nihil de his, quae intelligo, tu potes intelligere. Deus igitur non est comprehensivus omnium nisi secundum eminentias eorum utpote comprehendit albedinem secundum clarissimum esse; hominem similiter et sic alia. Et secundum dicta bene videtur fuisse ratiocinatus Aristoteles dicens,[178] quod Deus nihil intelligit eorum inferiorum quae intelligimus quia tunc intellectus ejus vilesceret. Et certe verum est, quia tunc sequeretur

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° Ms. aliis.

[177] Cf. 12 *Meta. tx. com.* 44, VIII, 154r A.

[178] Cf. 1074 b 25–28.

quod intellectus ejus esset aequalis nostro in perfectione. Si enim sit perfectior, jam alium habebit intellectum circa objectum ut probatum est in prima conclusione.

De Entibus Imaginabilibus

ADVERTENDUM quoque est hic de entibus imaginabilibus de quibus potest dici quod habent veram existentiam praeexistentem imaginationi et remanentem transeunte imaginatione sicut est in visibilibus et audibilibus, et ita chimaera existit. Si quis somniat se esse cardinalem, sic erit; non enim negatur nisi quia non est sic sub esse visus. Nunc illud non destruit; sunt enim diversa esse sensus exterioris, esse imaginationis et esse intellectus. Unde si existeret sub visu, jam non esset imaginabile ut dictum est. Vere igitur existunt, licet sua existentia non sit talis, qualis est rerum subjacentium sensibus exterioribus. Et similiter dicendum est in intelligibilibus; nam ut supra dictum est nihil intelligibile sentitur sicut nihil sensibile intelligitur; sed intelligibilia habent suum esse proprium distinctum sicut sensibilia, et ita erit verum quod quaelibet virtus praesupponet suum subjectum esse et nulla constituet ipsum. Unde ut sensibilia puta visibilia praecedunt et necessario habent praecedere visum, sic imaginabilia imaginationem.

Et verum videtur esse quod occurrit super dispositione talium imaginabilium et intelligibilium, scilicet quod non sit aliqua necessitas dicendi quod sunt generabilia et corruptibilia. Item quod multitudo in eadem specie accidat in eis nec determinatio particularis essendi in loco.

Consequitur etiam ex dictis quod falsum est dicere quod omne ens sit intelligibile; illud enim quod sentitur non intelligitur secundum quod visum est supra, licet aliquid intelligatur quod appropinquat ad illud in similitudine et convenientia.

Praeterea considerandum est quod quando dicimus: albedo existit, quae prius non existebat, ipsa albedo recipitur ex parte subjecti secundum esse quod habet secundum [p] quod est objectum intellectus vel imaginationis et connectitur sibi ex parte praedicati omne existere quod non est nisi esse albedinis secundum quod est objectum sensus, et ista duo distinguuntur realiter. Et etiam secundum hoc esse existentiae et esse existentiae distinguuntur realiter. Et propositio sic formata est contingens si res sunt corporales.[q] Si quaeratur de esse existentiae quod attribuitur objecto imaginationis vel intellectus, utrum sit distinctum, diceretur quod sic formaliter propter causam dictam supra; non autem realiter simpliciter quia ibi non est possibilis separatio ut aliqualiter innui supra.[179] Et si quaeratur propter quid res dicitur simpliciter existens quando existit secundum esse quod comprehenditur a sensu, responsio in hoc erit quod illud esse praesupponit esse imaginationis et esse intellectus, et ideo tunc est verum dicere quod ipsa res existit secundum omne sui esse et ita simpliciter et universaliter existit. Et quod objectum imaginationis vel intellectus non transeat transeunte actu videtur probabile ex hoc; nam si objectum quod habet majorem connexionem, vel saltem non minorem, non transit transeunte actu, nec objectum quod habet minorem connexionem ad actum; sed sic est quod objectum sensuum exteriorum habet majorem connexionem ad actum sensus exterioris cum ipsum magis vel non minus capiatur quam objectum imaginationis in actu imaginationis; sed tenetur ut certum quod non transit transeunte actu; igitur nec illud.

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[p] Ms. ss'm.

[q] Ms. cor$^{\text{les}}$.

[179] Cf. p. 232.

Et ex dictis videretur quod res etiam quantum ad esse pro quo est objectum sensus exterioris non corrumpitur quia, si res sit incorruptibilis secundum esse minus perfectum et secundum quod est minus sub intentione naturae, multo magis et secundum esse perfectum; sed res pro eo esse pro quo est objectum imaginationis est hujusmodi ut dictum est supra.[180]

Ulterius sciendum quod, ut dictum est in superioribus, quaelibet potentia in actu suo praesupponit objectum suum existere, et quanto actus potentiae est clarior, tanto praesupponit suum objectum clarius existere; hoc est in esse clariori ut visus praesupponit objectum suum existere in esse clariori quam imaginatio, et per consequens, si sit clarissimus, praesupponet ipsum existere in esse clarissimo, / et illud dicetur esse principale esse objecti existere. Igitur si 17v
sit aliqua virtus quae perpetuo et clarissime cognoscat res ut creditur de Deo, tunc debebit dici quod res semper existunt, et simpliciter poterit hoc dici. Inducamus super hoc similitudinem: potentia visiva comprehendit clarius suum objectum quam imaginatio; esto quod per impossibile illud esse transiret quod habetur albedo secundum quod est objectum imaginationis, dum tamen remaneret quantum ad illud esse pro quo est objectum visus, adhuc diceretur simpliciter albedo esse. Igitur si aliqua virtus quae clarius comprehendat albedinem quam visus, esto quod transiret objectum quantum ad esse quod apprehenditur a visu, et ita illud esse quod cognoscit visus tolleretur; tamen si maneat quantum ad illud quod participat potentia clarior, adhuc posset dici esse simpliciter, licet non deberet dici quod haberet esse universaliter.

Ex [r] praecedentibus apparet quod illa propositio non est omnino vera quae dicit: cognitio intuitiva est rei existentis ut existens et [s] abstractiva non; unde est indifferens [t] ad esse et non esse.[181] Ut supradixi,[182] quaelibet cognitio est rei existentis, sed in hoc est differentia, quia intuitiva est rei existentis sub esse claro magis, et si Deus sic clarissime omnia cognoscat ut creditur, nostra intuitiva etiam posset dici abstractiva respectu cognitionis Dei quae intuitiva simpliciter diceretur.

Et si res sit finita, tunc non videtur, cum unum objectum sit perfectius et clarius alio, licet sint ejusdem rei, quod in talibus circa eandem rem finitam sit procedere in infinitum. Quodlibet enim esse objectivum videtur deficere a perfectione quam habet res in se secundum esse subjectivum quod habet. Tunc secundum hoc est dare aliquod esse objectivum finitum supra quod, si procederetur clarius cognoscendo rem, res cognosceretur secundum esse subjectivum. Et cum hoc totum possit fieri per virtutem finitam sicut ipsa res habet esse finitum in se, vel Deus non est infinitus vel talem rem non cognoscet secundum conditionem suae naturae, nisi vellet quis dicere quod esse cujuslibet rei clarissimum [u] esset ens unum infinitum quod est Deus. Et magis videtur se intimare mens in hoc quod Deus nihil cognoscat eorum quae sunt extra se nisi quatenus relucent in sua essentia sicut videns albedinem clarissimam non dicitur videre obscuram in se, sed solum secundum quod eminenter videtur contineri ejus perfectio in albedine.

Ulterius considerandum quod aliquando occurrit quod illud esse objectivum rei non erat aliud nisi actus intelligendi quod non videtur verum ut ponatur exemplum de albedine quando videtur: est enim aliquid extra cui imponimus hoc nomen albedo, et aliquid intra, alias non deberet dici vas videre albedinem quam de lapide; albedinem enim quae est extra experimur per modum objecti; albedinem ad intra per modum actus. Et si quaeratur quid sit ille actus, non est alia notificatio melior ⟨*quam*⟩ [v] si quaeratur: quid est albedo?, ostenderetur ad digitum [w] illud quod hic vides; et similiter visio est illud quod habes cum dicis te videre albedinem. Et quod talis res quam cognitionem appellamus sit similitudo objecti, hoc nescimus per viam experientiae. Non enim cum intuemus actum videndi albedinis apparet nobis quod sit albedo vel aliquid simile albedini. Amplius: quaelibet similitudo videtur deficere a perfectione rei cujus est similitudo; nunc actus cognoscendi interdum videtur perfectior objecto; plus enim placentia naturali in qua non venit nisi bonum perfectius, videtur placere alicui quod cognoscat nigredinem quam ipsam haberet habitione reali.

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[r] Ms. et. [s] Ms. est. [t] Ms. in differentiis. [u] Ms. clarissimi?

[180] Cf. p. 241. [181] Cf. Ockam, *Prol.* I, 1, AA. [182] Cf. p. 229.

Notandum autem circa illud quod dictum est de esse objectivo quod per esse objectivum intelligo illud esse objecti quod habet quamdam [x] copulationem et indivisionem cum actu, ita quod ubicumque ponitur actus, ponetur et illud objectivum esse, ut cum quis in riparia existit in navi et videtur sibi quod ripa movetur; in quocumque poneretur talis actus videndi, veniret objectum secundum tale esse. Item esse objectivum multiplicatur esse subjectivo remanente uno, quia si sunt duo quorum unus intelligit objectum clarius alio, non est idem quod uterque intelligit, ut probatum est supra.[183] Et cum videtur probabilius quod res secundum esse subjectivum sit una; nam ad quamcumque rem quantumcumque unam aspicerent intellectus clarus et obscurus, aliud esset quod conciperet intellectus clarus quam quod obscurus ut satis ostensum est supra.[184]

Unde dici quod diversitas conceptuum, ut si dicatur res vera quanta bona et sic de aliis, non arguit diversitatem subjectivam in re sive sit diversitas realis vel formalis, sed solum in esse objectivo; nam in istis conceptibus capitur eadem res, licet secundum aliud esse objectivum. Ad eandem enim rem aspicit ille qui dicit quod res est bona, vera et aeterna; non sic in aliis conceptibus omnino disparatis utpote in conceptibus hominis et asini et similium. Et secundum hoc potest sumi medium ad sciendum qualis diversitas conceptuum est sufficiens ad concludendum diversitatem subjectivam in re.

Et si quaeras de re in se subjective sumpta, an sit aeterna, vera et bona, dicendum quod in se subjective non est aeterna formaliter, id est, quod fundet aeternitatem sicut unam realitatem seu formalitatem in se subjective existentem, et sic de aliis; sed bene est verum quod habet ex se quod a tali intellectu possit secundum talia esse objectiva. Si quis enim intelligeret rem secundum esse subjectivum quod habet in se, non affirmaret plura praedicata de ipsa; et licet non cognoscamus illud esse subjectivum secundum quod est in se, sed solum secundum talia esse objectiva, tamen affirmamus de istis esse objectivis secundum quod supponunt vel accipiuntur pro illo esse subjectivo quod est unum in se, et sic de aliis. Et cum intellectus clarior intelligat rem in esse objectivo magis intimo rei, sequitur quod clarissimus intellectus intelliget rem propinquissime, et tunc videretur verum quod intelligeret rem secundum quod est in se.

Et circa illud quod dictum est de existente in navi, sciendum est quod motus aliquando habet esse quasi subjectivum ut quando natura rei sic se habet quod a visu vel intellectu applicato rei videretur, ita quod quodammodo tale esse subjectivum [y] copulatur cum rebus et hoc est quando quantum ad veritatem dicitur communiter res moveri; aliquando / vero habet magis copulationem cum ipso actu videndi quam cum natura rei ut cum existenti in navi 18r apparet quod ripa moveatur, et tunc dicitur magis habere esse objectivum quam subjectivum.

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[v] Ms. *lacuna*.

[w] Ms. dignitatum.

[x] Ms. quam cum.

[y] Ms. biuu.

[183] Cf. p. 240.

[184] Cf. *ibid*.

Juxta materiam de actibus intelligendi induco unam rationem ad probandum aeternitatem rerum. Pone quod sit albedo Parisius et una in Anglia; probo quod, quando succedit nigredo in subjecto in quo erat albedo quae erat in Anglia, quod albedo non corrumpitur; et primo induco probationem istius conclusionis quod per eundum actum numero videtur albedo quae [z] est Parisius et albedo quae est in Anglia totaliter similis. Recipio has propositiones quando videtur albedo quae est Parisius; verum est dicere quod non solum per actum istum videtur haec albedo, quia tunc non posset videri haec albedo in perpetuum corrupto hoc actu videndi; quod tu negas.

Secunda propositio est ista quod per omnes tales actus sicut est iste videtur haec albedo; eadem enim ratione qua haec albedo potest videri per aliquem actum alium ab isto qui est totaliter similis isti, eadem ratione per quemcumque actum totaliter similem isti. Nunc ex quo albedo quae est Parisius est totaliter similis albedini quae est in Anglia, verum est dicere quod actus videndi eas sunt totaliter similes. Dicamus igitur hoc recepto albedo Parisius dicatur *a* albedo, albedo Angliae *b;* actus videndi *a* dicatur *c*, actus videndi *b* dicatur *d*. Tunc sic: *a* nedum potest videri per *c* solum, sed per quemcumque actum similem ipsi *c* per propositionem secundam; sed *d* est totaliter simile ipsi *c* per supraposita. Igitur per *d* potest videri *a*. Sic etiam dicam de *b* quod poterit videri per actum *c* eadem ratione. Cum igitur *a* videatur per actum *c* et similiter *b* per actum *c* est idem actus in numero, sequitur quod albedo Parisius et albedo Angliae possunt per unum actum numero videri. Ex [a] quo sequitur alia conclusio quod quotiescumque videtur albedo Angliae. Probatur sic: pro quocumque instanti apud ⟨*visum*⟩ alicujus inexistit actus videndi alicujus objecti videtur illud objectum; sed pro instanti pro quo existit apud visum istius actus videndi albedinis Parisius existit apud visum ejus actus videndi albedinis Angliae quia unus et idem actus videndi in numero est secundum probata supra.[185] Igitur videtur albedo Angliae cum videtur albedo Parisius.

Ex istis potest argumentari ad conclusionem principaliter intentam, scilicet quod, quando succedit nigredo in subjecto albedinis Angliae, non corrumpitur albedo Angliae. Certum est quod quando succedit nigredo non propter desino videre albedinem quae est Parisius. Nunc igitur cum iste actus videndi sit ita, bene actus videndi albedinis Angliae sicut albedinis Parisius sicut ipse actus non tollitur ad sublationem albedinis quae est in Anglia, ita non tollitur ad sublationem albedinis Parisius, et ita transeunte albedine Parisius adhuc remaneret, et ita sequeretur quod visus deciperetur circa suum objectum, esto quod ibi concurrunt debita dispositio organi et medii et debita distantia objecti quod est contra omnes, immo sic dicere est destruere omne principium certificandi super dispositione rerum; non enim certificamur de rebus nisi per apparentias nostras quae contingenter se haberent ad objecta ut visum est. Et intellectus sermonis verus est secundum intentionem nostram; nam eadem est albedo Parisius et in Anglia, ita quod in ratione albedinis nulla est differentia, et ita quando succedit nigredo albedini quae est in Anglia, licet desinat esse ibi albedo, tamen non corrumpitur, sed omnino in completo suo esse Parisius remanet; et sicut [b] dici potest de hac re quod sit aeterna, ita de quacumque alia re. Et si quaeras quare deficit esse in Anglia, dicam quod hoc est propter recessum localem vel quasi cujusdam principii determinantis rem ad essendum in certo ubi quod communiter appellatur principium individuativum rei, et compositum ex tali principio sic determinante naturam non potest esse in pluribus locis. Et si quis teneat quod alia est albedo Parisius et Angliae, deducetur ad diversos errores secundum conclusionem probatam supra;[186] nam pone quod clarissime videt albedinem Parisius, verum est dicere quod videt clarissime albedinem Angliae ut supra probatum est.[187] Ex quo sequeretur quod objectum remotum ab infinita distantia, si esset, videretur ita clare sicut si esset propinquum ad duos pedes. Dicamus igitur quod albedo est omnino eadem Parisius et in Anglia.

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[z] Ms. quod.

[a] Ms. et.

[185] Cf. ll. 7 ff.

[b] Ms. sic.

Et multo melius potest dici quod actus videndi quo Socrates et Plato vident unum objectum in numero est idem actus in numero. Magis enim videtur albedo cum sit magis materialis determinare sibi certum locum, ita quod una in pluribus esse non possit quam de actu videndi vel de quocumque alio actu animae; et tamen eadem albedo est Parisius et in Anglia ut dictum est. Igitur multo magis idem actus videndi, idem visus, idem intellectus et sic in aliis. Et si dicas idem numero esse in pluribus locis est impossibile, dico quod vel sumis unum idem numero pro eo quod sic est unum quod nullo modo plura, et haec est falsa si recipiatur universaliter; vel intelligis per unum numero unum a determinatione naturae quae est determinata ex se determinatione ultimata quale est res composita ex principio individuante, haec erit vera, sed non ad propositum tuum. Quid autem sit illud principium contractivum naturae, hoc habent dicere adversarii qui illud ponunt; apud me non est nisi quoddam determinativum naturae ad essendum in certo loco et ipsius non est aliqua operatio. Unde non est sic perfectum vel nobile sicut natura cujus sunt principaliter operationes et actus, licet ipsius sint quantum ad contractionem quamdam respectu certi ubi. Et si quaeras quid esset de albedine remoto omni tali contrahente per possibile vel per impossibile, dicerem quod albedo non esse alicubi positive, sed privative in quolibet; in hoc est privative quia non est in aliquo alio ubi; et hic considera.

Et si quis ex protervia [c] vellet impedire processum factum supra, quo probatum est quod videns albedinem Parisius videt albedinem Angliae, respondens ad principium super quo erigebatur ratio cum dicebatur: habens actum videndi alicujus objecti videt illud objectum, diceret: verum est si sit praesens; nunc albedo Angliae non est praesens. Contra: non ponunt requiri objectum nisi quia necessarium ad creandum actum vel ad terminandum habitudinem quae est actus ad objectum. Nunc propter primum in casu proposito non requiritur praesentia quia probatum est quod actus videndi albedinis Angliae inest; nec propter secundum; nam ibi non requiritur praesentia; / nam etiam 18^{v} secundum eos, si duo alba in infinitum distarent, ita esset relatio inter ipsa sicut nunc est.

Amplius secundum Averroim 3 *de Anima*,[188] cujus dicta pro veris recipiunt, intelligere non est aliud nisi recipere intellecta et perfici secundum ea; et certum est etiam secundum eos quod ista perfectio non est nisi secundum actum vel speciem objecti. Nunc probatum est quod inexistit actus videndi albedinis Angliae, et per eandem rationem potest probari quod inexistit species, si species ponatur distincta ab actu.

Item ut arguebatur supra [189] si actus videndi et sic de aliis actibus aliorum sensuum exteriorum possint esse in potentia et non cognoscetur objectum, pone quod approximatur, tunc si nihil plus poneretur in potentia quam esset, sicut prius potentia non cognoscebat objectum sic nec nunc cognoscet. Unde verum est quod in quocumque est cognitio, illud est cognoscens, et in quocumque est cognitio alicujus objecti, illud est cognoscens illud objectum.

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[c] Ms. proterviam.

[186] Cf. p. 244.

[187] Cf. *ibid.*

[188] Cf. III *de Anima, tx. com.* 18.

[189] Cf. *ibid.*

Et non solum ex prioribus videtur esse probatum quod eadem sit albedo quae est Parisius et in Anglia, sed etiam quod pluralitas albedinum non est possibilis, et sic est in omnibus aliis rebus ut manifeste potest apparere per praedicta. Item vel est aequalis perfectionis existere duo sicut unum, et tunc alterum superflueret vel majoris in duobus et tunc existere oporteret infinita talium vel mundus non haberet esse completum.

Sed aliquibus videretur quod processus principalis superius factus posset improbari quando dicebatur quod sicut remota albedine Angliae non desinebat actus videndi albedinis Parisius, ita remota ista non desineret actus videndi illius. Diceretur quod non est simile quia albedo quae est Parisius est causa efficiens et conservans aliquo modo actus videndi ipsius, et ideo remoto hoc objecto desineret iste actus, propter quod dicendum quod ad illud objectum contingenter non se habet. Sed hoc non videtur valere; nam cognoscens clarissime tunc non haberet ut sic quod certitudinaliter judicaret de objecto; nam accidit sibi quod objectum sit causa efficiens vel conservans quoniam a quocumque alio agente causaretur actus cognoscendi ex quo virtuti inexisteret cognitio, diceretur cognoscere illud objectum. Unde si ab agente superiori causaretur et conservaretur, cognosceret illud objectum, et tamen deciperetur circa illud; quod videtur esse falsum.

Ex alio contingere potest improbatio sermonis praedicti; ille satis concedit quod qui videt albedinem Parisius videt albedinem Angliae, et tamen dicet quod cum hoc stat quod sunt duae albedines quod est oppositum illius quod intendebamus. Contra: cognoscens clarissime duas albedines divisas [d] subjecto vel duo continua cognoscit clare numerum inesse eis; sed cognoscens albedines Parisius et Angliae non cognoscit numerum inesse eis, et tamen utramque clare cognoscit secundum probata supra; igitur non est dualitas in eis. Item cognoscens aliquod objectum clare potest experiri se cognoscere illud objectum; sed cognoscens albedinem Parisius numquam experitur se cognoscere albedinem Angliae. Et si quis diceret: assumpta in majoribus duarum rationum praedictarum vera sunt quando non solum albedo cognita est cognita, sed quando est causa efficiens suae cognitionis; hoc non valet, immo frivolum est si quis attendat. Ex alio non contingit quod videatur numerus nisi quia clare videntur numeralia quae diversa sunt. Et ex alio non contingit experientia de actu nisi quia habetur et clare.

Amplius potest adduci ratio ad confirmationem principaliter intentorum. Probo primo quod idem objectum numero a virtute eadem objecto aequaliter approximato, medio disposito aequaliter et virtute aeque forti aequaliter intenta, non possit videri nisi uno actu in numero; nam si dicas quod pluribus sic quod nunc uno actu potest videre, dimittet actum videndi; iterum videbit et erit alius actus videndi in numero. Inducam rationem ad oppositum sic: si una virtus in numero contineret plures actus videndi in numero respectu ejusdem objecti in numero, cum illi actus sint similes et aequales quantum contineret unum, et alterum; tunc sic: in existentibus pro aliquo instanti omnibus concurrentibus ad causandum aliquem effectum, causatur ille effectus; sed pro illo instanti pro quo videtur haec albedo hac visione, inexistunt omnes causae alterius visionis similis et aequalis isti; plura namque non requiruntur nisi virtus, objectum et approximatio etc., et ista insunt; ergo pro isto instanti ponitur illa alia visio, et sic pro quocumque instanti visus videret aliquod objectum, videret illud infinitis visionibus. Quod confirmatur et redit quasi in idem; causa naturalis naturaliter agens continens aequaliter plures effectus, vel neutrum illorum producit vel omnes simul;[e] non enim est ratio quare magis unum quam reliquum. Sed visus et objectum sic se habent quod continent aequaliter omnes videndi actus istius objecti ex quo omnes sunt similes; non enim est ratio quare unum plus quam reliquum; igitur est verum quod uno actu videndi in numero semper videtur objectum. Nunc autem si cum desiit aliquis videre post videat illud objectum idem in numero et non potest esse pluribus visionibus ut dictum est, oportebit concedere quod ille actus videndi quo primo videbatur objectum non corruptus est simpliciter, licet desinaverit hic esse, quod est propositum, vel quod idem in numero erit reparatum, quod est contra eos, quia universaliter quorum substantia deperit non possunt eadem numero reverti ut habent ab Aristotele 5 *Phys.*[190]

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[d] *Read* diversas?

Sunt etiam aliqui dicentes ad impediendum processus supra quod licet illi actus videndi sint aequales, tamen ordinationem habent in fieri. Non apparet veritas responsionis hujus. Unde resumatur major sic: nulli duo effectus omnino similes et aequales possunt habere ordinationem necessariam in produci quia agens continet eos aequaliter, nec ordo potest originari a fine quia aequaliter est bonum unum esse sicut reliquum. Item cum sit majoris perfectionis continere duo similia quam unum, alias numquam duo similia inexisterent in natura cum unum superflueret, ita et continere tres quam duo et sic infinita. Et ita cum quaelibet virtus contineat de se infinita, quoniam, quantum continet istum actum, tantum quemlibet similem sibi; igitur erit infinita.

19r Circa / principaliter intentam conclusionem quae est de aeternitate rerum occurrit quidam modus alius ponendi ut aliqualiter innui in prioribus.[191] A causis eisdem numero producitur semper idem effectus numero; ista est mihi evidens et ex apprehensione terminorum et ex resolutionibus suprapositis; nam si eadem causa numero contineret plures effectus tales vel nullum produceret vel omnes simul ut dictum est supra.[192] Poterimus igitur dicere quod omnes res sunt aeternae, ita quod demonstrata quacumque re particulari verum est dicere quod semper fuit, nunc est et semper erit; nam pone quod lumen sit nunc in hemispherio nostro, dico quod de nocte illud lumen non est corruptum, sed est productum in alio hemispherio a nostro. Unde in aliquo tempore fuit hic et in fine [in] illius temporis fuit in alio hemispherio productum, vel si tempus componatur ex instantibus ut alias dixi,[193] tunc in hoc instanti est hic et in instanti immediate se habente [f] in hemispherio immediate se habente.

Et ita ista regula est vera quod res producetur quae est, immo quae omni tempore fuit, et secundum hoc dicere quod hoc agens producit istam rem non est dicere quod faciat eam esse postquam non fuit, sed solum dicere quod facit rem esse. Et secundum hoc posset dici quod quando continue videtur objectum aliquod, supposito quod actus videndi sit productus, in quolibet instantium temporis producitur, quia semper causae praesentes producunt suum effectum nisi aliud impediat; et hic sunt omnes causae praesentes, virtus visiva et objectum et nihil impedit, quia hoc videretur maxime facere existentia rei eo quod ut videtur nihil quod est potest produci, et ita est falsum ut dictum est supra.[194]

[e] Ms. sil'.

[f] Ms. habent.

[190] Cf. 228 a 3–6; cf. V *Phys. tx. com.* 36.
[191] Cf. p. 241–2.
[192] Cf. p. 246 f.
[193] Cf. p. 206.
[194] Cf. p. 244.

Dicamus igitur quod si lumen sit aliquid productum, quamdiu corpus caeleste est praesens producit lumen in medio, et secundum hoc conservatio rei hic non est aliud nisi continua productio rei. Aliquando vero conservatio rei non est aliud nisi prohibitio exitus corporum calidorum a re per quorum exitum redderetur res frigida ut in camera in qua fuit ignis quando fenestrae clauduntur.

Et secundum hoc quando quaeritur utrum omnes res sint aeternae, diceretur quod "eas esse aeternas" posset intelligi dupliciter utpote in rebus quae dicuntur generabiles et corruptibiles quod haberent unam productionem quae transiret in praeteritum et ipsa res duraret semper postea; et sic non est verum. Et ita intellexit Aristoteles [195] quod aliquae res sic sunt corruptibiles. Item quod sua existentia semper duraret in eodem loco vel subjecto, et sic non est verum de rebus generabilibus et corruptibilibus, vel quod continue producerentur sive in hoc loco sive in alio, sive in hoc subjecto sive in alio, et sic est verum quod omnes res sunt aeternae. Et forsan in hoc non est intentio commentatoris Averrois qui dicit quod nihil corruptibile ex se potest esse perpetuum ab alio nisi motus.[196] Et hoc est verum quod nihil corruptibile ex se potest esse perpetuum ab alio productione transeunte super esse pro praeterito ut prius expositum est. Et quod subjungit exceptionem "nisi motus" vult in hoc dare diversitatem inter motum et alias res; nam si recipias motum infinitum in duratione, non potest imaginari sic esse perpetuus sicut aliae res, quae fuerunt productae in esse, possunt sic intelligi esse perpetuae, ut dictum est, quasi productio agentis transiverit sub esse praeterito, ita quod amplius non sit, et tamen durent perpetuo; et iste intellectus non esset de intentione Aristotelis. Sed nec motus potest intelligi sic esse perpetuus; nam cum non sit totus simul sed secundum partes et est infinitus in duratione, numquam productio ejus potest intelligi ratione esse posita sub esse praeterito. Unde sermo imaginatus ab aliis sub dispositione rerum permanentium non haberet hic locum; et ita si quis diligenter inspiceret, satis posset dici quod conclusio proposita non est contraria intentioni Aristotelis. Quid ergo dicendum de albedine quae nunc est hic secundum intentionem Aristotelis quando non apparebit hic? Si dicas quod est alibi, igitur est facta translatio in accidente de subjecto in subjectum, et tamen secundum Aristotelem passiones non separantur a suis subjectis,[197] et videtur intelligere per passiones omnia accidentia. Et responsio erit in hoc altero duorum modorum; vel diceretur quod non est facta translatio accidentis de uno subjecto ad aliud subjectum; nam sicut est nunc alibi sic et suum subjectum, et licet hoc esset probabile, tamen non sumus necessitati sic dicere; nam dicere quod hoc est sine translatione per productionem quae prius erat hic, nunc est alibi et totum causaliter reducitur in motum corporum caelestium; est igitur verum dicere quod illud accidens nunc est in isto subjecto et nunc in alio sine aliqua tali translatione imaginata. Imaginantur quod secundum hoc oporteret dicere quod illud accidens quasi [g] fuerit productum et productio transiverit sub non esse, et postea quasi manu acciperetur et poneretur in alio subjecto; nunc sic non est imaginandum secundum prius dicta.

Amplius sciendum quod quidam antiqui [198] dixerunt omnes res esse aeternas in tantum quod nolebant inquirere de causis, praecipue effectivis rerum, quasi quaelibet res haberet ex se esse. Contra quos dicit Aristoteles quod sunt aliquae res corruptibiles sicut et nos concedimus sic intelligendo quod indigent causa efficiente, et iterum sic sunt corruptibiles quod, si albedo sit hic et haec eadem in numero producatur in Anglia, in Anglia potest dici non fuisse prius quantum ad hoc quia sicut, si non fuisset prius hic, indiguisset agente, sic et nunc indiget. Item prius hic non erat nec sumus secundum hoc necessitati dicere quod sit aliquid unum sive universale sive particulare quod sit in pluribus locis, sed solum quod, quando haec res desinit esse hic, alibi producitur. Verum est dicere: quacumque [h] albedine demonstrata ista albedo nunc est hic et nunc non est alibi, neque ipsa neque totaliter similis; nam ut dixi, si essent plures effectus similes, continerentur simul in virtute activa agentis, et ita vel virtus activa neutrum produceret effectum [i] vel omnes simul. Unde apud me non videtur ista esse impossibilia et quod sit talitas perfecta et quod sit alietas; nam et talitas quodammodo ex nomine quantum ad connotatum praesupponit alietatem; siquidem nihil est tale sibi ipsi, et alietas non videtur stare cum talitate perfecta, et melius est fundamentum in hoc supra rationes superius / inductas. 19v

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[g] Ms. q^u isi.

[195] Cf. 283 a 5 ff.

[196] Cf. XII *Meta. tx. com.* 51, VIII, 152^v A.

[197] Cf. 1028 a 18 ff.; cf. VI *Meta. tx. com.* 4; V *Meta. tx. com.* 26.

[198] Cf. 742 b 20 ff. *and* 983 b 6 ff.

Et videtur relinqui dubitatio super aliquibus non omnino similibus sicut albedo clara et obscura albedo, utrum sit aliquid commune in eis. Et esset hic unus modus dicendi, sed non tenendo posita supra, ut videtur primo, videlicet quod albedo, ubicumque habeat esse subjective, semper est aequaliter clara, et si alicubi dicatur obscura, hoc non est nisi propter admixtionem contrarii scilicet nigredinis. Non igitur est sicut videtur in esse subjective, sed ipsa impedita a sua actione perfecta propter praesentiam contrarii causat unum objectum obscurum magis. De tali esse objectivo claro et obscuro, esto quod concederetur esse aliquid unum in eis; tamen non haberetur quod unum secundum esse subjectivum quod habet sit in pluribus locis.

Sed revertitur quaestio si albedo Parisius et albedo Angliae sic se habeant quod sicut una est clara sic et alia de se; tunc ut videtur vel erunt una albedo in numero, et ita idem in numero esset quod intendebatur probari; vel aliquid unum commune eis quod etiam intendebatur probandum. Et si esset responsio in hoc, concederet quod non est nisi una albedo Parisius et Angliae; sed hoc posset intelligi dupliciter: vel quod ista albedo sic esset una numero quod contineret unam productionem et in aequivalentia, et hoc est falsum, immo in aequivalentia continet plures. Unde pone quod Deus sit productivus albedinis hic, tunc contineat effectum sicut prius; tantum enim est perfectus sicut prius; non apparet impossibile quin possit producere effectum ibi, id est, facere quod effectus ibi sit. Et tunc dubitatur; vel ista productio est aliquid distinctum a producente, vel omnino idem; si idem, tunc sicut prius non producebat ibi, nec nunc producet; si sit distinctum, tunc videbitur accipere esse ab agente, et sicut agens est unum, ita productio erit una. Et tunc cum illa productio prius fuisset, videtur quod albedo debebat semper fuisse in Anglia ex quo productio una numero semper durat. Et dicetur hic conformiter ei quod dictum est in aliis sermonibus supra [199] de motu in tractatu de substantia materiali et quantitate an sint distincta subjective, id est, in esse subjectivo, et ibi diximus quod hoc nomen "motus" non importat aliquid distinctum a rebus permanentibus, scilicet re mobili movente et termino, et ibi potest videri de possibilitate hujus rei. Et tunc secundum hoc est verum quod res est hic et prius non fuit; et tamen nulla realitas inexistit quae prius non existeret;

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[h] Ms. quamcumque.

[i] Ms. efficeret.

[199] Cf. p. 224.

nec est corrupta quae prius esset, et ibi considera; et sic suo modo hic. Unde solum secundum motum localem corporum caelestium haec albedo aliquando producitur hic, aliquando alibi.

De substantia materiali et quantitate satis concedamus quod sunt diversa in esse objectivo quia ibi sunt diversi conceptus ut dictum est supra.[200] Et secundum hoc stabit distinctio praedicamentorum posita ab Aristotele.[201] Et hic considera si vis intelligere, quia res indiget attenta consideratione, et multitudo juvenum hic statim caderet in desperationem comprehensionis dictorum supra in pluribus locis. Sed videtur multum inintelligibile et falsum quod aliquis unus esterus numero quamdiu est hic stante quod hic sit simul alibi possit produci; nam in isto tota claritas agentis quantum ad istum modum claritatis qui concernit hunc effectum, videtur expressa in effectu qui est hic. Sed haec ratio non multum concluderet; etiam si quis recipiat illud sicut impossibile, praecipue de agente, quod est ita perfectum sicut primum quia verum est, sed si jam virtus sua est completa in hoc quod esterus est hic. Item secundum motum corporum caelestium non posset attendi qui simul secundum eandem partem non sunt in pluribus locis. Ideo secundum supradicta aliquid unum est in eis, et illud est universale non contractum ultimate per principium individuativum et nihil prohibet quin tale possit esse in pluribus locis simul, etiam secundum opinionem communem tenentium naturam specificam [j] esse unam in suis suppositis. Et bene considera quod probabiliter posset teneri, licet non secundum dicta, quod ubicumque habet esse caliditas, habet esse aequaliter perfectum; similiter de frigiditate, albedine et nigredine et sic in aliis; non tamen ubicumque facit aequaliter suam actionem propter admixtionem contrarii. Et sic bene stabit dictum Aristotelis 3 *Meta.*[202] quod in individuis non est ordo; et illud 3 *Top.*[203] quod albius dicimus aliquid quia nigredine impermixtius. Non autem est aliquid albius altero in esse subjectivo, sed in esse objectivo solum; unum enim contrarium impedit actionem alterius contrarii.

Sed videntur ad destructionem hujus probabilitatis facere duo. Primo quia unum contrarium a sua actione non semper aequaliter impeditur, non videtur quod hoc sit nisi propter hoc quia aliquando magis admiscetur de suo contrario, et ita jam suum contrarium recipiet magis et per consequens reliquum oppositum secundum regulam topicam. Item aliqua non videntur se impedire in operatione nisi quia prius impediunt se in principio operationis, scilicet in essentia, ita quod unum debilitet alterum. Item ridiculum esset dicere quod in igne candelae esset [k] tantum intensive de igne sicut [l] in fornace incensa. Quod enim hic minus admisceatur de contrario, hoc tamen ⟨*non*⟩ est nisi quia expulsum est per perfectam inexistentiam contrarii, et in hoc videtur veritas. Nec intellige quod aliquid sit calidius propter habere plures gradus caliditatis aequales omnino quia illud est impossibile ut dictum est superius; sed propter habere unam caliditatem perfectiorem; et ideo si acciperentur duae candelae omnino aequales et similes quantum ad materiam, formam et omnia, quod non est possibile ut supra innui,[204] dicerem quod in puncto medio ubi concurrerent lumina, non esset majus lumen nec illud medium esset magis illuminatum quam prius et tantum de mille sicut de duobus. Et secundum hoc videretur sequi improbabile multum, quod, si acciperetur de cera omnino simili et fieret torchia, non magis luceret quam modica candela; nam videtur positum quod regula quod concursus plurium ejusdem rationis non operatur

[j] Ms. specificum. [k] Ms. esse. [l] Ms. sic.

[200] Cf. p. 226. [201] Cf. 1 b 25 ff. [202] Cf. 999 a 12. [203] Cf. 119 a 27. [204] Cf. p. 247.

intensiorem effectum. Et dicetur quod antecedens est impossibile quod esset aliquid tale continuum omnino ejusdem rationis in suis partibus nisi ut res venit in esse objectivo; non enim est dare plura ejusdem rationis omnino in universo ut supradixi,[205] immo secundum hoc esse cujuslibet rei consistit in indivisibili secundum quod innuit actor sex principiorum.[206] Unde de qualibet re non erit nisi punctus et sicut torchia fit non nisi sicut aggregatum ex pluribus diversarum rationum, sic lumen est aliquid aggregatum ex pluribus diversarum rationum; sed tunc videretur quod ratio illarum perfectissima sufficeret; et diceretur quod non, quia non habet perfectam continentiam aliarum, licet sit perfectior aliis; vel si vis reverti ad communia magis, non recipere rationes adductas supra, quod [m] efficacibus / 20^{r} si ordinentur ad probandum quod non possunt esse duo ejusdem rationis in universo, sed in quantum probant quod illa non continentur in virtute activa unius agentis in numero. Sed illud non patitur quia si sint totaliter similia, qua ratione unum continetur ⟨*in virtute*⟩ activa agentis hujus, eadem ratione reliquum ut deducebatur supra.[207] Et secundum hoc si Socrates sit albus, poterit dicere nunc: nemo est omnino tali colore coloratus, vel quando videt hanc albedinem vel intelligit, potest dicere: nullus videt hanc albedinem pro nunc omnino tali visione, quia, ut dictum est, non est dare in universo plures effectus omnino similes. Et sequetur ex hoc quod haec albedo est de perfectione universi quia ex quo non contingit reperire omnino talem in universo, quodammodo idem est species et individuum. Unde exornatur natura inexistentia talis rei quae non inexistit nisi quia hoc inexistit. Et si dicas: individua non sunt de perfectione naturae, dico quod duplex est individuum: individuum naturae et individuum loci. Individuum naturae ut est albedo in qua includitur albedo et cum hoc aliqua talitas finalis constitutiva hujus albedinis, et tale individuum naturae bene est de perfectione naturae sive universi; individuum vero loci est ut hoc individuum esse hic apud nos in isto hemispherio et non sic est de perfectione universi. Unde hoc lumen non semper est in hemispherio nostro, sed aliquando in alio, et ita ipsum esse hic non est simpliciter de perfectione universi, sed pro tempore pro quo est.

Super eo autem quod dixi virtutes activas esse in rebus possunt induci probabilitates aliquae. Primo: facultas et difficultas, poenalitas, lassitudo quae experimur in nobis quando aliquid est alicubi [n] ubi prius non erat ut cum aliquid movet lapidem parvum vel majorem; cum aliquis videt solem vel aliam rem. Iterum aliud super hoc inducitur; nam ut dictum est, cum haec albedo desinit, in instanti desitionis est alibi et non apparet semper quod transferatur ad locum propinquum. Si igitur hoc esset per modum translationis ⟨*agente*⟩ indigeret. Et ideo satis recipitur ut propositio magis conjecturalis quod ipsa sit alibi per modum causationis, ita quod alibi sit causata secundum modum supra expositum. Et secundum dicta potes videre quod resurrectio est possibilis utpote si homo, qui nunc est, desineret esse hic in hemispherio nostro et causaretur alibi et iterum desineret ibi esse per aliquod tempus post et tunc causaretur hic, diceretur resurrexisse. Et advertendum quod secundum alterum duorum posset intelligi aeternitas rerum vel quod remanerent semper sub integritate alicujus totius copulati sicut nunc sunt, ut verbi gratia, in Socrate sunt multae realitates diversarum rationum copulatae ut caro, os et anima. Nunc posset sic intelligi quod Socrates sic esset aeternus quod sic semper esset sicut nunc est, sic intelligendo quod, cum Socrates non sit omnino idem sibi puer et senex, immo aliquo modo variatur de hora in horam, intelligeretur quod quando desineret esse sub una dispositione utpote sub dispositione pueritiae, alibi esse sub eadem dispositione et postea alibi et sic semper usque ad circulum, donec fuisset ubique et non solum secundum horas vel dies, sed etiam secundum momenta, ut statim cum hic desineret esse sub una dispositione, inciperet esse alibi sub eadem. Alius[o] esset modus intelligendi aeternitatem in rebus secundum viam segregationis ut nullacubi esset Socrates per modum totius copulati, sed alicubi esset albedo ejus causata, alibi ejus virtus et sic de aliis, et tandem revoluto circulo magni orbis, iterum fieret congregatio; et horum modorum recipe probabiliorem. Et quod dixi quod non est idem senex et puer declaratur ex hoc quod nulla virtus potest immutari in sua essentia nisi corrumpatur. Pone duas virtutes propinquissimas in natura; *a* sit virtus magis perfecta, *b* sit minus perfecta; nunc si *a* immutaretur versus imperfectionem, hoc non esset nisi quia fieret *b*, et tunc quantum ad veritatem esset corruptum *a* et esset causatum *b*. Et ideo dicendum quod virtutes pueri non sunt eaedem, saltem omnes, cum virtutibus hominis perfecti quia tunc aeque perfecta opera produceret puer cum homine perfecti status. Habet igitur alias virtutes perfectiores et istae sunt alibi causatae, quia tamen mutatio virtutum continua est ad multum propinquam dispositionem semper dicitur idem numero. Non sic forsan esset si puer anni unius efficeretur senex subito vel quia puer est simillima radix quae jacitur et praeexigitur necessario secundum cursum regularem naturae; et licet iste habeat post virtutem rememorativam perfectiorem quam prius, hoc tamen est respectu objectorum prius visorum et rememoratorum per memoriam priorem debilem. Et pro factis malis in juventute interdum punitur in senectute; nam aliquis efficitur ad illud esse senectutis custodiendum sicut ad suum proprium esse, et ideo prae timore punitionis infligente tunc, etiam nunc abstineret, tamen stricta ratione inspecta, verum est dicere quod punitur ille qui non delinquit, et ideo naturae inditus est timor talis ut praetextu illius se retrahat a peccato. Et sic etiam de morte, quam aliquis timet, potest dici quod, nisi timeretur, multa mala et multa homicidia perpetrarentur; et malum est quod connexio entium bene facta dissolvatur. Unde etiam furiosus de delicto facto ante furorem potest puniri ut unusquisque agnoscat quod semper punietur vel in se vel in reliquiis suis.

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[m] *Read* quam??

[n] Ms. alicui.

[205] Cf. p. 247.

[206] Cf. Gilbert Porretanus, Ed. A. Heysse, *in* Opuscula et Textus, *by* Grabmann & Pelster, Fasc. VII, p. 11.

[207] *Cf.* p. 247.

Et ex praedictis potest dici, si quaeratur an puer sit homo, si appellatio recipiatur a figura magis in genere, tunc quia habet figuram ad modum hominis, caput sursum, pedes deorsum, ut sic deberet dici homo. Sed appellationem ex hoc recipere non est conveniens, sed magis ex operatione et virtute inexistente; nunc sicut non habet operationem, ita posset dici non habere virtutem et solum deberet dici quod habet virtutem ut operatur. Et ita de puero unius diei, si moriatur, potest dici quod nec habuit virtutem ridendi neque ratiocinandi, licet bene habuerit aliquas praeparationes remotas ad hoc sicut est in spermate. Consuetum[p] tamen est dici quod homines et ⟨*illi sunt*⟩ ejusdem / speciei; 20v et causa consuetudinis forsan est ut homines magis compatiantur eis. Et si puer non habet virtutes hominis, conveniens est inquirere an virtus existit sub quiete, verbi gratia quando aliquis non movet lapidem vel aliquod aliud grave, utrum habeat virtutem movendi lapidem. Videtur quod non, quia tunc ejus esse esset otiosum pro illo tempore. Videtur contra, quia tunc nullus deberet eligere quietem nec virtus naturalis cum fatigat naturam, natura non deberet naturaliter ad hoc inclinari, cum in hoc consisteret ejus destructio; et

[o] Ms. alicujus.

[p] Ms. conseietum.

ideo posset satis dici quod remanet sub quiete, nec est otiosum cum in hoc accidit conservatio ejus in supposito, alias causaretur alibi et hic desineret esse et loco ejus esset imperfectior. Unde corpus caeleste cum quibusdam concurrentibus spiritibus causat talem virtutem qui continuato opere utpote motionis gravis recedunt, et loco eorum veniunt magis imperfecti. Et cum labor est multum excessivus, totaliter recedunt; cum parvus et moderatus interdum fit accessus spirituum magis virtuosorum et omnino apud magis exercitatos magis veniunt quasi quaererent locum operationis, non quietis; dum tamen sit operatio ordinata; et sicut dictum est de hac virtute sit intelligendum de aliis.

De Intellectu

CIRCA intellectum vero essent quaestiones aliquae. Primo an intellectus sit idem intellectus cujuslibet hominis. Videtur quod non quia cum unus homo dicitur esse mortuus, verum est dicere quod numquam ita clare sicut unus alius numquam audivit ita clare et sic de aliis. Igitur numquam indiguit virtute in tantum perfecta et per consequens in natura est aliquid otiosum quantum ad gradum excedentem.

Praeterea omnis virtus operatur operationem adaequantem suam naturam, quia si esset aliquis gradus virtutis cui non responderet aliquis gradus operationis, ita nec alii qui sunt imperfectiores, vel saltem non sunt perfectiores, et ita virtus nihil operaretur. Praeterea omnis virtus naturalis operatur secundum totum cognatum suae naturae. Item omnis entitas cujus positio est possibilis et conveniens, et ut sic est in natura. Isto principio declarato supra usi sumus in tractatu de aeternitate rerum;[208] sed intellectus correspondens gradui operationum imperfectarum est possibilis; non enim includit repugnantiam in conceptu et tamen est conveniens ut ponatur; multum enim conveniens est ut non sit aliquid superfluum neque diminutum et quod cuilibet gradui virtutis correspondeat aliquis gradus operationis.

Et ex his satis clare declaratur quod alius est intellectus Socratis et alius Platonis. Item ad confirmationem secundum illam viam, si ab aequali virtute inaequales operationes procederent, nullus esset gradus dignificandi unam virtutem super aliam; non enim mensuramus eos nisi per operationes, et ex his non solum sequitur quod alius sit intellectus Socratis et Platonis, sed etiam juvenis et decrepiti, si quid ille in omnibus clarius operatur quam decrepitus. Unde sicut si haberet oculum juvenis videret ut juvenis, ita si haberet intellectum juvenis intelligeret ut juvenis, immo videtur quod sicut aliquis de die in diem et de hora in horam transmutatur in intelligendo magis clare vel minus clare et sic in aliis operationibus, secundum hoc etiam fiat transmutatio in virtutibus.

Consequenter restat declarandum an idem intellectus sit respectu omnium intelligibilium. Videtur quod non, quia tunc quilibet habens intellectum haberet virtutem intelligendi omnia intelligibilia, et tunc cum sint aliqui qui vix semel syllogizaverunt in vita sua in universalibus, intellectus in quantum continebat intellectionem aliorum intelligibilium fuit otiosus. Et diceretur conformiter prioribus quod si sint aliqua intelligibilia quae non arguant inaequalitatem virtutis sicut in virtute motiva portare lapidem centum librarum vel ferrum centum librarum. Ponamus sic conformiter, et tunc habens virtutem unius habet virtutem et alterius quia ejusdem virtutis et aequalis est in utrumque posse; sed ubi diversitas intelligibilium requirit quantum est de se inaequalem virtutem sicut qui vult concipere materiam primam in rebus requiritur quantum est ex parte effectus perfectior virtus. Et tunc in istis dicendum est quod est alius intellectus, alias in isto qui numquam intelliget illa difficilia intelligibilia gradus intellectus excedens esset otiosus. Item ut arguebatur supra,[q] conformiter operationibus debent virtutes respondere ut sicut est differentia in perfectione et imperfectione in operationibus sic et in virtutibus; et ideo ut nihil superfluum neque diminutum conformiter operationibus ponamus gradus in virtutibus secundum perfectionem et imperfectionem, et sic de aliis rationibus satis propinque suprapositis;[r] nam omnes positae ibi habent hic locum. Et ita si quodlibet intelligibile secundum quod videtur secundum quod est in se unum magis clarum alio, et tum ordine ad nos, secundum hoc ejus intellectio originatur a propriori intellectu; et hoc: quot sunt conceptus, tot erant intellectus. Et ita de caeco nato qui caecus moritur posset dici quod numquam habuit intellectum intelligendi colores, licet forsan habuerit intellectum intelligendi aliqua difficilior[s] intellectionis quam sint colores apud non orbatum visu. Unde sicut[t] in domo patrisfamilias bene ordinata non debet esse aliquid superfluum neque aliquid diminutum, sic neque in regno Dei.

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[208] Cf. p. 193.

Sed videtur difficile si tot sint intellectus quot conceptus, quia tunc videtur quod nullus intellectus poterit ponere differentiam inter aliqua duo quia nullus unus intellectus cognoscit aliqua duo. Et dico quod sufficit quod ab aliquibus intellectibus copulatis ad invicem et cum aliquo uno supposito sunt intellecta extrema, et tunc inexistit quidam intellectus cognitivus differentiae quae est inter extrema. Unde sicut corporalia quae sunt in supposito habent [quam] quamdam copulationem ad invicem et quemdam[u] ordinem, sic isti intellectus[v] habent quamdam copulationem consecutionis cujusdam naturalis, et forsan posset dici quod ubi / sunt isti tres intellectus, scilicet duo 21^r
extremorum et tertius intellectus differentiae fundantur in eadem essentia animae, et hic considera amplius.

Restat his suppositis difficultas an aliquis posset plura intelligere, et si plura, quare non ita faciliter decem sicut duo, et videtur quod sic deberet esse quia ex quo procedunt a diversis intellectibus, nullus eorum recipit fatigationem in operatione convenienti suae naturae; nec apparet quomodo possunt ad invicem se impedire. Et responsio videtur esse in hoc; nam ⟨*in*⟩ intelligendo est quidam motus spirituum secundum quod apparet ex dispositione consequente, scilicet fatigatione et mutatione spirituum in debiliores, et quanto aliquis ad plura se convertit, tanto requiritur major motus et velocior secundum quod apparet per experientiam; et interdum virtutes motivae spirituum non sufficiunt ad tantam motionem et cessat intellectio. Unde est hoc quod requiratur talis motio spirituum? Difficile est, tamen posset dici quod hoc est quia non intelligimus aliquid nisi aliqualiter cum materia vel admixtione alicujus habentis modum materiae. Imago rei quae habet modum rerum corporalium defertur ad locum ubi fieri debet intellectio, vel forsan melius, cogitatio praerequisita intellectioni. Spiritus isti quorum aliqui deferunt imaginem istius rei; alii imaginem alterius rei in suo motu ad invicem possunt se impedire, et tunc neutrius[w] affertur imago rei nisi truncate; et isti sunt qui truncate et imperfecte judicant de rebus. Et ita si esset aliquod ens cui copularentur tales intellectus qui haberent semper imagines rerum praesentes sine tali motione spirituum, utique ibi posset esse intellectio infinitorum; non enim apparet impossibilitas in hoc, et hoc conceditur de primo.

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[q] Cf. p. 253.
[r] Cf. *ibid.*
[s] *Read* difficiliora.
[t] Ms. sic.
[u] Ms. quamdam.
[v] Ms. intellcu̅o̅.
[w] Ms. neutros.

An Aliqua Eadem Causa Possit Producere Diversos Effectus in Specie

Ex praedictis rationibus satis apparet an aliqua eadem causa possit producere diversos effectus in specie. Et videtur quod non; nam recepto [x] effectum imperfectiorem illorum duorum, verum est dicere quod de se non requirit causam ita perfectam sicut effectus perfectior quia si sic,[y] tunc penes nobilitatem effectuum, numquam posset argui nobilitas causarum. Amplius: effectus imperfectior non plus requirit nisi quod causa sit talis quod ipsum possit continere in virtute; nunc secundum opinionem communem omnium aliquid quod non est perfectius alio potest ipsum continere in virtute sicut in productione univoca, licet ut dicunt causa aequivoca debet esse perfectior suo effectu. Igitur cum ille effectus non indigeat causa tam perfecta sicut effectus perfectior, quantum ad gradum excedentem erit perfectio superflua; ut igitur nihil sit frustra, dicamus quod a causa sibi convenienti secundum perfectionem producatur. Iste enim est ordo conveniens quod effectus perfectus producatur a causa perfecta et perfectior a perfectiori et perfectissimus a perfectissima.

Item, sicut arguebatur supra,[209] omnis entitas possibilis, cujus positio esset conveniens et ad ornatum universi, est; sed illa est quaedam entitas possibilis, scilicet causa directe correspondens effectui; non enim includit repugnantiam in conceptu et ejus positio est conveniens; ⟨*conveniens*⟩ enim videtur quod quilibet effectus producatur a causa sibi convenienti. Amplius: videtur quod causa, quae operatur secundum totum cognatum ejus, operatur perfectiorem effectum et solum ejus effectum perfectiorem ut videtur; sed causa naturalis semper operatur secundum suum totum cognatum. Amplius: causa operatur in quantum talis; nunc ex quo est una non videtur habere nisi unam talitatem sicut unam essentiam. Dicendum igitur quod una causa non producit diversos effectus in specie maxime disparatos; si autem imperfectus esset sequela perfectioris, forsan posset quia ex primo deberet tunc attendi nobilitas esse.

Quid igitur convenienter dicendum an idem effectus possit produci a diversis causis in specie? Videtur quod non, quia sicut effectus est unus in se habens unam talitatem et unam essentiam, ita non videtur produci nisi ab una causa habente unam talitatem et unam essentiam. Amplius: illa duarum causarum quae est perfectior semper ex se habet producere effectum perfectiorem; imperfectior [z] imperfectiorem; igitur non erit convenientia in effectu. Item productio cujuslibet effectus est modo convenientissimo possibili; sed quod unus effectus producitur ab una causa in eodem genere causae et modo causalitatis videtur productio magis conveniens, ut sicut est unus in se, sic habeat unam causam, nec aliud videtur possibile quia effectus non requirit plus nisi aliquod ens quod contineat ipsum in virtute activa. Amplius et aliqualiter revertitur in idem cum aliquibus prioribus. Numquam concursus causae imperfectioris cum causa perfectiori immutat naturam ejus; sed causa perfectior ex se habet producere effectum perfectiorem et imperfectior imperfectiorem. Item vel ille effectus productus a causa perfectiori et imperfectiori esset perfectior effectu praecise producto a causa perfectiori, et tunc non apparet a quo istum gradum excedentem perfectionis possit habere quia neque a causa perfectiori neque ab imperfectiori. Et dicet aliquis: ab utraque simul. Contra, quia ponamus quod effectus perfectissimus sit a causa mediocriter perfecta et imperfectiori; numquam esset medium ad probandum quod non, quia licet diceretur: effectus iste excedit perfectionem [a] istius causae, et illius, adhuc secundum te non sufficeret; sed dices: immo excedit perfectionem causarum simul junctarum. Si sic dicatur, inquiratur ultra quomodo inquiretur perfectio istarum causarum simul junctarum. Ponamus sic: causa perfectior includit tantum de perfectione sicut imperfectior et adhuc unum gradum de imperfectiori; ponamus quod contineat tres gradus; si igitur connumerentur gradus causae imperfectioris cum omnibus gradibus causae perfectioris, idem sumeretur bis, quia per positum causa perfectior includebat / 21v perfectionem [b] imperfectioris et adhuc plus. Nunc idem bis sumptum non dicit majorem perfectionem in intensione perfectionis sicut mille albedines omnino aequales, si essent, non ponerent intensiorem perfectionem in ratione albedinis. Et forsan haec ratio non concludit, quia tunc videretur mundus esse ita perfectus per existentiam causae perfectioris tantum [c] sicut per existentiam perfectioris ⟨*et imperfectioris*⟩ simul; nec est continentia nisi aequivoca et secundum aequivalentiam et continentia aequivoca; forsan hoc esset fingere quod illa duo entia sunt unum ens, et tunc videatur in quo naturaliter haberet homo complacentiam majorem considerato quolibet illorum entium vel in illo ente quod unum fingitur, si per impossibile sic se haberet veritas, vel in alio quod quantum ad veritatem est unum. Et quidquid sit de responsione vel ratione illa superiores faciunt me existimare quod haec conclusio sit probabilior opposita, quod numquam effectus unus non procedit nisi ab una causa, et hoc est verum de effectu simplici, non de composito ex rebus diversarum naturarum, secus esset in alio, quia tunc quantum ad veritatem ibi sunt diversa entia sicut in Socrate ossa, caro, anima, sanguis etc.; et ideo ibi oportet ponere diversas causas.

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[x] Ms. receptio. [y] Ms. sint. [z] Ms. imperfectiorem. [a] Ms. perfectiorem.

[209] Cf. p. 186.

Et ex istis regulis quod una causa non possit habere plures effectus specie diversos, et quod unus effectus non potest produci nisi ab una causa, sequuntur multa contra consueta enuntiari. Ex istis sequitur quod ignis non producitur ab igne neque caliditas a caliditate; nam pone modico igne ut scintillulae posito sequitur maximus ignis et intensus multum. Nunc caliditas una naturaliter est perfectior alia et similiter unus ignis alio quia numquam est dare duos effectus omnino similes et aequales ut in superioribus probatum est. Nunc secundum hoc ignis prior fuit imperfectior et ejus caliditas similiter. Tunc sic: ignis sequens est productus a priori et caliditas a caliditate; ergo praecise ab igne priori per regulam supra: unus effectus non potest produci nisi ab una causa; sed ignis prior est imperfectior per positum; igitur causa imperfectior praecise producet effectum perfectiorem et hoc est impossibile; igitur et illud ex quo sequebatur, scilicet hypothesis assumpta quod ignis modicus generasset ignem majorem et caliditas imperfecta perfectiorem. Nec diceres, transmutato ordine, quod ignis prior generaret caliditatem posteriorem, et caliditas prior ignem posteriorem, quia hoc esset impossibile quantum ad secundum cum caliditas, si ab igne distinguatur, sit imperfectior; neque ab agente perfectissimo producitur quia ille non producit effectum nisi convenientem suae naturae, scilicet perfectissimum effectum ut dictum est in superioribus, et solum unum effectum producit in quantum est causa naturalis.[209^{1}] A quo igitur producetur? Potest dici quod a virtute ignitiva et calor a virtute calefactiva inexistente rei calefactibili. Et secundum hoc esset mirabile ex quo est virtus calefactiva praesens et calefactibile quare non semper calefacit, praecipue quia illud, quod dicitur de causa sine qua non, non videtur mihi nisi sermo non habens rationem.[210] Omne enim praerequisitum necessario et per se ad positionem alicujus effectus est causa illius, alias non posset probari aliquid esse causa alterius, vel forsan addendum est, si non sit imperfectius ens effectu; potest tamen dici quod illa virtus inexistit alicui superiori agenti et haec virtus habet quamdam copulationem in operari cum effectu formali, ita quod quando approximatur ignis alicui calefactibili, saltem ⟨*si*⟩ ignis talis sit perfectus, tunc calefacit illud calefactibile, et secundum hoc quod est calefactibilius, copulatur sibi virtus calefactiva perfectior; et secundum hoc est falsum dicere quod lumen calefacit vel quod motus nisi quia ista assequuntur virtutes quaedam calefactivae. Ventus autem facere videtur ad generationem ignis ut in sibillo oris vel in sibillo artificiali, praecipue quando est moderatus; et hoc est quia cum tali vento recedunt aliqua corpora quae impediebant receptionem ignis in tali subjecto, ita quod virtus ignitiva perfecta non copulabatur sibi; quando vero est immoderatus, tunc etiam removentur illa quae disponebant subjectum ad igneibilitatem. Supra in tractatu de aeternitate rerum [211] dixi quod quando ignis dicitur produci quantum ad veritatem non est nisi adventus aliquorum corporum calidorum, et frigiditas per recessum illorum et adventum corporum frigidorum ut in aqua calida quae sibi derelicta revertitur ad naturam priorem, scilicet frigiditatem, per recessum calidorum corporum et accessum frigidorum. Et in hoc ultimo non videtur improbabilitas magna nisi quod, cum ignis apparet ubi prius non apparebat, non videtur quomodo motus localis corporum calidorum potuerit ita cito fieri. De sole etiam dicimus quod non calefacit, sed quaedam corpora calida in regione ignis sunt nata assequi motum solis. Similiter est in frigiditate cum dicitur: iste planeta frigefacit, et sic in aliis suo modo de motu corporum calidorum imaginaretur quod sunt satis propinqua,[e] sed prohibita sunt a sua actione propter admixtionem multam contrarii; nunc concurrunt ad locum ubi est ignis quem consequitur virtus expulsiva frigidorum, et tunc ibi facit suam actionem.

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[b] Ms. perfectiorem.

[c] Ms. mutum?

[209^{1}] Cf. p. 247.

[210] Cf. Ockam IV *Sent.* 1 G ff.; Cicero *De Fato* III, 111.

Ex illis regulis suprapositis quod unus effectus non procedit nisi ab una causa etc., sequitur quod anima unius hominis qualiscumque sit non est producta ab alio homine quia sequitur: ab eo producta, ergo praecise producta; igitur alterum non est ignobilius quia causa numquam potest excedere suam perfectionem in producendo ut dictum est; neque aeque perfecta quia ut dictum est supra [212] non est dare duos effectus aequales in una specie; igitur erit perfectior; et hoc est falsum, immo plerumque imperfectior reperitur quantum ad omnes virtutes et operationes. Producitur igitur ab aliquo agente superiori; / non dico ab agente perfectissimo nisi sit effectus perfectissimus ut 22r
probatum est superius.[213] Et si homo qui diceretur producens sit perfectior, hoc accidit quia tantum videtur facere imperfectior circa generationem hominis sicut magis perfectus. Et sicut dictum est de homine sic intelligendum de asino et omnibus aliis, et per consequens nulla erit productio univoca quia vel causa esset imperfectior quod non potest esse, vel aeque perfecta quod improbatum est supra,[214] vel perfectior, et hoc accidit sibi in quantum causa effectus ut statim dictum est. Homo tamen bene potest esse aliquorum praerequisitorum ad quae forma hominis habet ordinem ut seminis et aliorum; homo, id est, aliqua virtus inexistens homini.

Et considerandum est juxta praedicta quod illa est falsa, quod virtus aliqua producit effectum perfectiorem in subjecto perfectiori et imperfectiorem in imperfectiori quia virtus aliqua non habet ⟨*nisi*⟩ unum effectum ut dictum est supra,[215] et ideo vel illum producit vel nullum. Sed verum est quod, nisi subjectum sit conveniens ad recipiendum illum, non producet in illo subjecto, sed cum illo subjecto copulabitur in operari virtus imperfectior. Subjectum enim indispositum nihil immutat de natura agentis quin, si producat, producat secundum convenientiam suae naturae.

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[e] Ms. propinquae.

[211] Cf. p. 201.

[212] Cf. p. 256.

[213] Cf. p. 255.

[214] Cf. *ibid.*

Ex dictis apparet dissolutio quaesiti de quo commentator Averroes disputat in 7 *Meta.*,[216] qualiter est quod aliqua animalia ut mures generantur per putrefactionem et alia quae eadem dicuntur per generationem. Et esset dicendum quod haec generatio et illa est aequivoca et fit a virtute superioris agentis; sed revertetur super praeparationem materiae et eam praeparantibus quae sunt alia et alia. Et dicetur quod etiam diversitas aliqua est in natura, licet sit propinquitas magna in natura.

Revertamus nunc super unum de superioribus [217] an causa debeat esse perfectior suo effectu vel sufficit quod sit aeque perfecta; et hoc est verum quod causa ut sic est perfectior quia ut sic habet esse formale quia illud quod est nihil in se causat, et cum hoc exprimitur virtualis continentia in effectum ut sic, licet ponatur primum, non tamen secundum. Item simpliciter debet esse perfectior quia si imperfectior non appareret quomodo in virtute contineret effectum perfectiorem, immo satis videtur notum quod non posset continere neque aeque perfectam quia vel essent ejusdem speciei vel diversae; igitur unum esset perfectius altero; si ejusdem, hoc non potest esse, ut satis probatum est in superioribus, quoniam unum non haberet unde habuisset prius esse nec unde fuisset prius causa alterius quam e converso; igitur oportet quod sit perfectior. Sed videtur contra; nam si opus esset ab aeterno improductum, cessaret bonitas et amabilitas virtutis producentis. Tota enim amabilitas ejus videtur originari ex opere; dicendum quod bonitas virtutis praecise non est in opere nisi argumentative; arguimus enim ex opere amabilitatem et bonitatem virtutis, sed in se habet suam propriam bonitatem et amabilitatem. Unde esto quod opus esset improductum, adhuc esset bonum tale ens esse, licet ipsum hoc facere non esset bonum quia jam esset factum. Et intellige quod omnis causa aeque faciliter producit suum effectum quantum est de se, quia omnis causa uniformiter comparatur suo effectui; sed interdum aliquae causae impediuntur et aliae succedunt quas concomitatur tristitia. Unde pone virtutem calefactivam perfectissimam quae copulatur cum igne perfectissimo approximato aquae frigidissimae quam consequitur virtus [f] frigefactiva perfectissima; non intelligo quod calor remissus producatur ab illa virtute perfectissima quia illa non potest agere nisi secundum modum suae naturae; sed istae virtutes se impediunt; sic tamen consequuntur quaedam [g] aliae virtutes quae non sunt sic perfectae quae inducunt suos effectus. Et si caliditas perfectior erat et activior in genere caliditatis, tunc quasi adducit per quamdam concomitantiam unam virtutem calefactivam perfectiorem; sed dices: istae secundae virtutes se ita impediant sicut primae et per consequens nihil producent et sic neque tertiae; quod apparet falsum esse. Si quis diceret quod ibi non est productio caliditatis, sed solum accessus et recessus corporum calidorum et frigidorum quae impediunt se quia, si non fuissent corpora frigida, plus fuissent recepta de calidis et e contra, tunc difficultas non haberet locum. Aliter dicendum ad difficultatem; videtur supponere ex modo arguendi: duae virtutes perfectissimae quaelibet in genere suo puta virtus calefactiva perfectissima, frigefactiva perfectissima et quod una impediverit aliam et successerunt aliae imperfectiores; et non est sic, immo virtutes, quae infuerunt, habuerunt suum effectum. Propter quod sciendum est quod ut innui aliqualiter supra[218] virtus calefactiva perfectissima copulatur quantum ad operari cum igne perfectissimo, ita quod operatur ubi est ignis perfectissimus, si sit materia disposita quam corpora ignita subintrant, et quanto magis subintrant, ei penetrant supposita identitate materiae, tanto virtus calefactiva perfectior operatur. Nunc quando ignis et aqua approximantur, ignis non sic subintrat in materiam aquae propter frigiditatem quae repellit vel virtus expulsiva concomitans. Et similiter est ex parte frigiditatis, et ideo virtus calefactiva tunc non operatur, sed imperfectior et calorem imperfectum, et secundum hoc non inveniret instantiam qui subtiliter inquireret, quin causa semper producat secundum conditionem suae naturae ubicumque operetur, et quod effectus perfectior est a virtute perfectiori productus.

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[f] Ms. virtutis.

[g] Ms. quae.

[215] Cf. p. 247.

[216] Cf. VII *Meta. tx. com.* 28; cf. also I *De Gen. Anim. tx. com.* 1.

[217] Cf. p. 255.

Apparet ex dictis quoddam dictum commune esse falsum, scilicet quod actus cognoscendi producitur a virtute activa animae et objecto[219] quia ut dictum est supra,[220] unius effectus non potest esse nisi una causa. Amplius est falsum quod objectum sit causa actus intelligendi quia plerumque objectum potest esse imperfectius actu intelligendi ut in relationibus, et ideo relinquitur quod quaedam alia virtus erit virtus activa actus cognoscendi, si talia entia sint producta.

Ex dictis habemus quod non omnia producta a primo agente neque sicut a producente totali quia solum illius est sic unus effectus adaequans suam naturam in produci, neque sit causa partiali quia tales causae partiales non habent locum nisi in effectu[h] complexo ex multis sicut visum est supra.[221]

Ex praedictis apparet quod si primum ens sit virtutis infinitae, nullus effectus potest produci ab ipso naturaliter quia quicumque effectus productus est finitus et ita numquam indiget virtute infinita,[222] / 22v sed sibi sufficit virtus finita perfectior, et ita infinitas in agendo esset ibi superflua. Item sequitur quod, si primum ens sit infinitum, non possit esse in magnitudine ut sequatur conditiones virtutum existentium in magnitudine quae majores sunt in toto quam in parte, et ita divideretur virtus ejus proportionaliter ad modum magnitudinis, et ita cum tota magnitudo sit finita, quia non est dare magnitudinem infinitam, sequetur quod virtus illa esset finita. Item non videretur esse in magnitudine nisi ut moveret vel faceret aliquem talem effectum et hoc non facit ut dictum est.[223]

Et circa hoc quod dictum est de causa naturali quod operatur secundum conditionem suae naturae,[224] estne verum in potentia libera, puta voluntate? Ut dictum est supra,[225] nulla causa potest producere nisi unum effectum et quod actus animae non producuntur ab objectis; ex quibus sequitur quod voluntas non possit in actum nisi in velle. Videtur quod non; primo de actu immanente elicito; possum velle hoc intensius vel remissius; similiter possum velle proicere lapidem duorum pedum vel trium, et ex hoc quod voluntas non operatur semper secundum totum suum cognatum, dicunt multi theologi quod consequentia est mala quod, si primum moveret mobile primum, quod moveret in instanti, moveret per intellectum et voluntatem, et ita posset velle movere in tali gradu. Ad contrarium videtur quod probatum est supra[226] quod quot sunt intelligibilia vel quot sunt conceptus, tot sunt intellectus quia una causa non producit diversos effectus. Et ita dicendum esset hic propter easdem rationes quod quot sunt volibilia, [vel] tot sunt voluntates [vel voluntates vel voluntates]. Et sicut dictum est quod nullus intellectus operatur ultra suam naturam neque infra, sic neque etiam voluntas; nam, si aliquando vellet infra suam naturam, semper vellet infra suam naturam quia una causa non habet duos effectus, et ita gradus perfectionis excedens esset superfluus in ea. Et ideo dicendum: videretur quod sicut intellectus primus non potest habere nisi actum convenientem suae naturae, sic neque actum volendi. Et secundum hoc intellectus primus qui intelligit nobilissimum objectum, scilicet seipsum, et habet actum volendi per complacentiam circa eundem. Et quod dicebatur quod nos possumus velle intensius et remissius dicendum quod hoc non est eadem voluntate sed alia et alia sicut quando [i] aliquis portet onus seu lapidem duorum pedum vel trium, hoc non est eadem virtute sed alia et alia.

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[h] Ms. effecta.

[218] Cf. p. 258.

[219] Cf. Saint Thomas, *Summa Theol.* I, 84, 6.

[220] Cf. p. 256.

[221] Cf. p. 256.

[222] Cf. Saint Thomas, *Summa Theol.* I, 32, 1 ad 2.

[223] Cf. l. 27.

[224] Cf. p. 253.

[225] Cf. l. 16.

[226] Cf. p. 254.

Et secundum hoc apparet quod quaestio de libertate voluntatis cessat si fiat quaestio de eadem voluntate in numero, utrum posset in hoc et in oppositum. Sed adhuc remanebit quaestio sic: una est voluntas eligendi itionem eundi ad ecclesiam et alia repudiendi. Nunc quaeri potest utrum de qualibet possit vere enuntiari quod possibile est ipsam mihi copulari; et videtur quod non, quia vel est aliqua causa copulationis aequalis ad utrumque extremum, et hoc non potest esse quia nulla causa naturalis sive libera est oppositorum eadem numero; ex quo enim per te quaelibet potest mihi aequaliter copulari, non est illa causa plus unius quam alterius, et sic neutrorum.[j] Si autem sit causa unius et non alterius, tunc illud, cujus non erit causa, mihi non copulabitur. Et si dicas quod jam insunt isti supposito illae virtutes, licet nondum acceptet vel repudiet, adhuc secundum hoc videtur quod numquam est verum dicere quod quaelibet pro aliquo instanti possit producere suum effectum; nam una est aequaliter potens producere suum effectum; vel igitur utraque produceret vel oportet quod insit aliqua causa propter quam alia habet cedere. Unde sic posset argui: omnis causa una habens solum unum effectum in potestate, cujus sufficienter est causa, producit suum effectum demonstrato aliquo instanti vel tempore, nisi aliquid impediat, alias numquam produceret. Sed sic est de qualibet causa sive naturali sive libera; nam quaelibet est determinata ad unum effectum sicut probatum est in superioribus, ita quod non potest nisi in unum effectum cujus sufficienter est causa, quia numquam unus effectus potest produci a duobus causis in specie ut supra probatum est; [227] igitur non impedita ponet suum effectum. Et ita de quacumque causa mundi, si non ponat suum effectum, verum est dicere quod est propter hoc quod est impedita non propter ejus libertatem ut imaginantur adversarii.[228] Et si quis poneret aequalia impedientia et expedientia ex parte duarum, sequitur quod neutra producet suum effectum vel utraque simul ut si quis esset in circulo super cujus partes omnes haberet influentiam corpus caeleste aequaliter, et esset secundum omnes ejus partes aequalis naturae et Socrates esset in medio videns cibum similem sub aequali quantitate in qualibet parte circuli; pone igitur quod insint virtutes volitivae secundum quarum quamlibet posset elici actus volendi ad unam partem circuli, ita quod secundum istum actum volendi et secundum istam virtutem volitivam ad unam partem; secundum alium et ejus virtutem ad aliam secundum posita supra, si ponantur inexistere istae virtutes et non impeditae neque per concursum impedientem se, quaelibet produceret suum effectum; sed hoc casu posito, si inexisterent, impedirent se per concursum, et esto quod aliquis vellet determinate se movere ad unum locum, non sequitur quod voluntas sit libera quasi habens se ad opposita; nam ista voluntas potest praecise in istum effectum ut dictum est; talis virtus volitiva movendi ad alium locum non inerat sibi. Sed dices quod immo inerat virtus volitiva movendi se ad quamlibet partem; nam ex quo ponitur distantia aequalis, partes similes et aequales, et sic de cibo ibi apposito ejusdem virtutis est, posse in omnes actus ex quo sunt omnes actus similes omnino; quantum unus continetur in ista virtute activa tantum et reliquus. Consequentia videtur esse vera secundum supradicta; et ideo dicerem quod hypothesis non est possibilis; nam ut dixi impossibile est esse duo effectus omnino similes et aequales in natura ut supra ostensum est.[229] Si igitur aliquis poneret quod primum ens est infinitum in perfectione et moveret primum mobile, hoc non posset intelligi quod moveret nisi naturaliter vel per suam voluntatem;[229¹] si naturaliter, igitur secundum conditionem suae naturae, et ita cum quantum movens est majoris virtutis, tanto motus est velocior sub nulla mensura habente / durationem successivam posset producere motum; 23r igitur in instanti produceret; et sic tenet consequentia Aristotelis 8 *Phys.*[230] Si per voluntatem moveret adhuc secundum dicta illa voluntas est determinata ad actum volendi adaequatum sibi, ita quod perfectior actus volendi elicitur a perfectiori voluntate. Cum igitur motus sit finitus, semper est imaginari voluntatem unam finitam cui iste effectus erit adaequatus. Unde effectus finitus numquam requirit causam infinitam, immo si concurreret virtus infinita, quantum ad infinitum sui esset superflua, in quantum per virtutem finitam a qua in infinitum ista distat potest produci. Sic igitur cum nulla virtus possit nisi in effectum adaequatum sibi, primum ens si sit infinitum neque intelligit aliquid extra se quia illud cum sit finitum potest adaequari virtuti finitae; [231] neque vult aliquid extra se; propter tamen non debet dici simpliciter ignorare vel non intelligere illud quod est extra se; nam ut probatum est supra,[232] si sint duo defigentes visum ad aliquid, quorum unus videat clarius, numquam totaliter idem isti videbunt, ita quod ille, qui habet virtutem visivam clariorem, numquam videbit illud idem penitus quod videt habens visionem obscuram; sed tamen non dicitur: illud non videt quia videt eandem rem sub esse clariori et videt albedinem clariorem quae eminenter videtur continere obscuram, sic etiam quia omnia relucent in essentia primi quia ipsa est eminenter totum ens. Ideo videns ipsam non dicitur totaliter alia ignorare, et ita intendere videtur commentator Averroes super 12 *Meta.*[233] quod qui cognoscit calorem perfectissimum, calorem per essentiam, non ignorat calorem in reliquis calidis.

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[i] Ms. quod.

[j] Ms. neut^{m}.

[227] Cf. p. 256.

[228] Cf. Saint Thomas, *Summa Theol.* I, 19, 4; I, 46, 1.

Item ex praedictis apparet quomodo est verum illud quod dicit Commentator [234] de intelligentiis et ipso caelo, quod si adderetur aliquid vel removeretur aliquid ab ipso caelo, numquam intelligentia moveret ipsum. Hoc est declaratum in superioribus, non hoc specialiter intelligentiis, sed est declaratum quod numquam causa perfecta potest in effectum causae imperfectioris. Quaelibet enim causa operatur effectum adaequatum sibi et non alium, ita quod nulla causa nec agit infra ipsam nec supra ipsam.

Quod igitur dicitur quod voluntas est ad opposita [235] non est intelligendum secundum individuum quod sit aliqua voluntas particularis quae sit ad opposita, immo quaelibet est determinata ad unum ut dictum est, sed intelligendum [k] est secundum speciem; nam est aliqua voluntas quae est respectu unius et alia respectu oppositi.

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[229] Cf. p. 251.

[229¹] Ms. vide hic *in margin.*

[230] Cf. 258 b 1–4.

[231] Cf. 266 b 16 ff. and I *De Coel. tx. com.* 52, 64.

[232] Cf. p. 240.

[233] Cf. 12 *Meta. tx. com.* 51.

[234] Cf. *De Subst. Orbis, Ch.* 3, IX, 5v.

[235] Cf. p. 260.

Juxta dicta supra circa principium tractatus hujus [236] dicebatur quod, si duo videntes eandem rem vel intelligentes quorum unus habet visum clariorem vel intellectum, non idem vident de re, sed unus videt albedinem claram magis ubi alius videt albedinem obscuram, et tamen illae albedines in esse subjectivo sunt una albedo, et illud quod quaerit quilibet videre, quando aspiciunt, idem est in numero subjective, licet veniat ad eos secundum diversum esse objectivum.[236¹] Et secundum istum modum dicendi posset sustineri probabiliter quod albedo et nigredo sunt unum in esse subjectivo; nam pone sunt centum visus ordinati secundum perfectius et imperfectius; supremus videt rem et secundum esse objectivum imponit nomen albedo; infimus videbit ita obscure quod illud vocabit nigredinem quod supremus vocabat albedinem, et tamen idem sunt in esse subjectivo. Sic suo modo dicatur ad intelligendum modum positionis quod albedo et nigredo non differunt in esse subjectivo, sed bene differunt in esse objectivo. Et si sic dicatur, ita poterit dici de quibuscumque rebus quod omnes res sunt una res in esse subjectivo, licet diversificetur esse objectivum secundum quod venit apud nos.

Illud igitur quod quaerit quaelibet res objectiva, et in quod movet, est unum esse subjectivum quod est Deus; et illud ens intelligit se cognitione eadem sibi in esse subjectivo et attingit in esse subjectivo secundum quod est. Sed isti positioni videtur obstare; nam ille qui videt clare, magis percipit nigredinem quam percipit ille qui est debilis visionis; igitur videtur quod quanto magis cresceret, tanto magis videretur nigredo, et per consequens albedo et nigredo numquam reperirentur uniri in esse subjectivo. Et responderetur quod visus potest intendi vel simpliciter in genere entis ut intenderetur usque ad comprehensionem perfectam objecti secundum quod in se, et haec est falsa; sed ipsa res in se aliquando apparet secundum unum tale esse objectivum, et illud venit in esse clariori apud unum quam apud alium; sed si ultra fieret processus in claritate, accessus fieret ad unitatem, et tandem reperiretur unum esse subjectivum quod quasi fundaret ista esse objectiva. Sed revertitur ratio secundum istum modum; nam esto quod esset unum esse subjectivum, nullus diceret quin unum esse objectivum appropinquaret magis sibi quam aliud, puta albedo quam nigredo. Nunc quando nigredo percipitur clarius, tanto esse objectivum est perfectius, et per consequens tanto magis ad esse albedinis, et tamen nunc magis judicatur distinctio et differentia quam prius et videtur magis recedens ab albedine.

Et hoc videtur multum obstare positioni praedictae; sed videtur responsio in hoc; nam primo imaginor illud esse subjectivum; secundo quosdam visus vel intellectus; pone centum ordinatos secundum perfectius et imperfectius; nunc ubi unus dicit albedo de illo quod videt, alius non videbit [m] nisi secundum esse magis obscurum et vocabit illud nigrum, et istorum visuum primus est ad esse subjectivum. Tunc imaginor quosdam intellectus alterius modi quorum aspectus non erit directus ad esse subjectivum rei, sed ad ista esse objectiva. Nunc esse objectivum quod unus appellat nigredo iste videbit, et quanto habet visum clariorem, tanto magis videbit illud esse objectivum in esse propinquo sibi; et quia in esse suo objectivo distinguebatur ab aliis esse objectivis, quanto clarius videbitur, tanto magis apparebit, quod distinguitur ab alio esse objectivo, scilicet albedine quod est esse objectivum respectu primorum, sed est esse subjectivum respectu secundorum. Et de istis secundo cognoscentibus procedit ratio, scilicet quod quanto clarius cognoscent, tanto magis apparebit eis nigredo distingui ab albedine secus est in primis cognoscentibus, immo si intenderetur cognitio, finaliter devenirent ad unum esse subjectivum.

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[k] Ms. intelli^{di}.

[236] Cf. p. 240.

[m] Ms. videbitur.

[236¹] Ms. vide hic *in margin.*

Utrum autem sint quidam de tertio ordine cognoscentium apud quos esse quod cognoscimus sit quasi esse subjectivum et ipsi habeant alia esse objectiva et illa alia et sic / 23^{v} in infinitum dubium est. Et videtur quod sic, quia quodcumque ens potest clarius et minus clare cognosci, et ita de esse objectivis illorum possunt clarius et minus clare cognosci, et videntes ista vident aliud et aliud et sic semper, et non sunt talia esse nisi objectiva. Sed videtur contra hoc, quia tunc esset processus in infinitum in entibus; et si diceretur quod tandem esset status, tunc illud esse objectivum sic esset imperfectum quod non cognosceretur nisi uno modo, et non posset comprehendi nisi secundum quod in se est.

Et secundum hoc videtur mirabile; nam secundum ordinem cognoscentium quem[o] imaginaris supra illud esse objectivum erit infimum ens magis remotum ab illo esse subjectivo in quo est veritas entis, et similiter virtus cognoscitiva sibi correspondens erit infima in genere cognoscitivarum, et tamen videtur quod quanto objectum est magis incognoscibile, id est, magis prope incognoscibilitatem, tanto perfectius sic potentia quae illud apprehendit. Et ita ista virtus cognoscitiva quae ponebatur infima erit perfectior omnibus aliis. Item aliae non apprehendunt nisi in esse objectivo;[p] illa autem in esse subjectivo. Et responsio in hoc videtur esse quod sunt aliquae virtutes quarum perfectio et imperfectio attenditur penes vigorem, non penes perfectionem objecti actus sicut virtus levativa ponderis; non enim est perfectior virtus quae levat aurum quam quae levat lapides; sed illa est perfectior quae vigorosior et quae majus levat pondus. Aliae non sic, sed penes nobilitatem objecti ut est in virtutibus cognoscitivis, et ideo illa non erit perfectior virtus, sed infima, et licet attingat objectum in se, tamen illud esse est minus perfectum. Item cognoscet effectum, scilicet illud esse objectivum quantum cognoscibile est in se, tamen non cognoscet causas illius esse quia tunc excederet suam naturam.

Et conformiter diceretur quod Deus, licet cognoscat se quantum est cognoscibilis in se, tamen non cognoscit in propria forma ea quae sunt infra se, quia tunc diminueretur in sua natura ut dictum est supra et declaratum.[237] Apud intellectus, qui non cognoscunt[q] nisi esse objectiva rerum, reperitur discursus de uno in aliud, secus est in alio vel in aliis intellectibus qui cognoscunt res quantum ad esse quod habent in seipsis. Ille igitur intellectus infimus cognoscet illud objectum ultimum in se secundum quod est, et ita in modo cognoscendi erit perfectior superioribus virtutibus excepta prima. Vel respondeas, et melius, quod etiam in modo cognoscendi non est perfectior quia quaelibet virtus cognoscitiva cognoscit aliquod esse objectivum in se et quantum est cognoscibile ut declaratum est in superioribus, sed non cognoscit esse objectivum cognitionis superioris, immo illud esse et sibi quasi esse subjectivum.

Et quod sit dare duplicem ordinem cognoscentium et quod nos simus in secundo ordine videtur per hoc quia omnis entitas intuibilis est ab intellectu quoniam illud non repugnat intellectui unde intellectus. Non enim repugnat potentiae cognoscitivae perfectissimae quod habeat suum objectum modo perfecto. Nunc virtus intellectiva est perfectior, ut videtur, et modus habendi per abstractionem non est perfectus, sed solum modus habendi per viam intuitionis,[238] et hoc convenit sensibus exterioribus qui sunt imperfectiores, neque illud videtur repugnare rei. Et alia est quod non omnis entitas est intuibilis uno intellectu quia, ut probatum est in superioribus,[239] unus intellectus non potest intelligere nisi unum intelligibile; igitur plures intellectus; et ita habemus secundum hoc unum ordinem intellectuum intelligentium intuitive. Et in experientia nostra est secundus ordo intellectuum intelligentium abstractive; sed non videtur quod sit aliquis intellectus intelligens intuitive nisi unus uno modo et ⟨*alius*⟩ alio modo, quilibet sic intelligens intuitive; nam ut dictum est quilibet intellectus apprehendit objectum primum in se quantum apprehensibile est.

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[o] Ms. quam.

[p] Ms. objectiva.

[q] Ms. cognoscit

[237] Cf. p. 240.

Certum est secundum supradicta quod nullus apprehendit primum esse subjectivum quod est ens simpliciter primum quantum apprehensibile est nisi unum ipsum quod ponamus, et in hoc videtur veritas magis; sed non obstante hoc adhuc potuerunt stare illi duo ordines intellectuum imaginatorum supra, licet non attendatur differentia secundum modum cognoscendi intuitivum et abstractivum. Vel forsan diceretur quod intuitiva non distinguitur ab abstractiva in hoc quod est cognoscere objectum in se ut dictum est, sed quia una est per discursum, vel quasi, alia non. Sed cum in nullo uno intellectu sit discursus, quia quilibet solum unum objectum cognoscit, non videtur esse differentia sufficiens, et ideo occurrit alius modus dicendi ut diceretur quod distinguuntur secundum quid, secundum clarum et minus clarum, quia intuitiva est magis clara quam abstractiva; sic intellectus de primo ordine dicerentur clarius cognoscere, et ita quodammodo intuitive, et his apparentiis visis non videtur differentia nisi in nomine.

Et quia dictum est quod cognoscens aliquod esse objectivum agnoscit illud quantum est cognoscibile in se, et tamen quaerit adhuc et dubitat quaerens: quid est album, quid nigrum? Ex hoc sequitur quod cognoscens rem quantum est cognoscibilis in se potest adhuc quaerere et dubitare. Unde isti quaerunt ut cognoscant eam in suo esse subjectivo primo[r] et fundamentali in quo radicaliter habet esse, et tantum, quantum possunt, se appropinquant per collectionem multorum esse objectivorum. Et considerandum quod apud unum hominem secundum diversos intellectus est unum esse objectivum quod est quasi esse subjectivum respectu aliorum esse objectivorum subsequentium ut, cum aliquis non habituatus vidit primo Socratem, habuit unum esse objectivum confusum quia multa esse objectiva confundit in se; nam postea comparet eum ad Platonem et habet unum esse objectivum, videlicet homo, post comparans ad asinum habuit aliud esse objectivum, scilicet animal et sic de aliis. Et ex collectione multorum talium / constituit definitionem quae 24ʳ
explicat illud quod[s] implicite continebatur in illo esse confuso, et illa esse objectiva distincta sunt superius ab esse objectivo quia ipsa multiplicantur esse subjectivo rei in se remanente uno, ut esto quod res sit una in se, si duo aspiciant, quorum unus sit visus clarioris, videbit clarius, et ita sequitur ut est deductum in superioribus loquendo de illo quod est in esse objectivo apud visum ejus quod aliud videbit unus et aliud alius. Videtur tamen casus possibilis poni ubi isti habentes visus differentes idem videbunt; nam ille qui est visus clarioris a remotis videbit rem minus clare, et per consequens sic poterit distare

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[r] Ms. p^e? [s] Ms. quid.

[238] Cf. Ockam, *Prol.* I, 1 Z ff. [239] Cf. p. 260.

quod ille qui est visus obscuri magis videbit aequaliter clare et diversis virtutibus, et ita diversae virtutes secundum intensionem perfectionis habebunt eundum effectum quod est superius improbatum.[240]

Item probatum est quod non possunt esse duo effectus ejusdem virtutis;[241] sed videtur contrarium esse verum quoniam cum eadem virtute existens prope videbit clare, et existens remote videbit obscure. Et videtur responsio in hoc ut praemittatur quod circa actum videndi est considerare duplicem virtutem, unam magis corporalem unitivam spirituum et radiorum visualium in quibus unitis vel quibus unitis fit delatio speciei usque ad organum visus, sive sit propter receptionem speciei, sive propter quodcumque aliud, certum est quod ad actum videndi praerequiritur talis unio spirituum, postea consideranda est quaedam virtus animae eliciens actum videndi; tunc ergo diceretur quod remotus qui videt rem ita clare sicut propinquus bene habet inaequalem virtutem et diversam loquendo de virtute corporali unitiva spirituum, et sic effectus ejus est differens; nam quando aliquis a remotis magis distat, si aeque clare velit videre objectum, tanto requiritur unio spirituum perfectior et radiorum visualium; sed quantum est de virtute animae eliciente[t] actum, dicimus quod una virtute animae omnino una in se, licet determinetur per aliqua principia individuantia ad esse hic vel ibi. Ad secundam instantiam de illo qui existens prope et remote videbit una virtute clare et minus clare, dico hic quod possibile est quod sit aequalis virtus uniens spiritus et aequalis effectus, scilicet unio spirituum et radiorum. Sed dico quod virtus animae eliciens actum tunc et nunc non erunt aequales, et si unum non possit esse in pluribus locis simul, tunc dicetur quod numquam duo possunt aliquod objectum aequaliter clare videre secundum superius enuntiata.

Et considerandum circa illa quae dicta sunt, quod numquam duo possunt habere unum effectum, quod numquam aliqua virtus agit infra se nec supra se, quod una virtus non potest habere nisi unum effectum, et quod quot sunt conceptus tot sunt intellectus,[242] sequitur quod intellectus qui est cognoscitivus universalium non est cognoscitivus singularium. Qualis igitur virtus ponet differentiam inter universalia et singularia? Videtur quod nulla, quia omnis virtus animae ponens aliquam differentiam inter aliqua duo cognoscit quodlibet illorum. Virtus autem cognoscitiva singularium non potest cognoscere universalia, quia tunc ageret supra se; nec e contra. Et dico quod una virtus animae, quocumque nomine vocetur, ponet differentiam, et illa non cognoscit nisi istud conceptibile, scilicet differentiam; extrema vero erunt cognita a duabus aliis virtutibus animae. Et istud sufficiebat Aristoteli 2 *de Anima*[243] cum voluit probare sensum communem eo quod ponimus differentiam inter actus sensuum exteriorum, scilicet videre et audire, et certe bene concluditur quod sit alia virtus; nam cognoscere istam differentiam est alterius virtutis a virtute quae cognoscit extrema. Unde non solum concluditur una virtus animae sed tres, licet possint dici una virtus; nam quasi ordinantur ad unum. Et arguuntur ex experientia quasi eadem tres virtutes animae erunt; nam in absentia cognoscimus actum videndi et actum audiendi, et sic erunt duae virtutes et concipimus differentiam; hic est alia virtus animae, tamen quia istae virtutes sunt propinquae, recipiuntur quodammodo pro una virtute, et ita dicitur quod virtus ponens differentiam inter aliqua duo extrema cognoscit quodlibet extremorum.

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[t] Ms. elicitive.

[240] Cf. p. 253.

[241] Cf. *ibid.*

[242] Cf. p. 260.

[243] Cf. 425 a 19 ff.; cf. II *de Anima tx. com.* 134, VI, 153^r.

Similiter non dicitur nisi unus intellectus quia in modo cognoscendi conveniunt omnes, scilicet in hoc quod est cognoscere abstracte. Cognoscit intellectus albedinem in se ut abstrahit ab omni loco et ab omni singulari, et sicut est dictum in objecto sensuum[u] exteriorum quod objectum praeexistit vel simul cum actu est. Nec esto quod per possibile vel impossibile desineret esse non desineret. Sic posset dici de objecto intellectus quod est universale, et ideo de tali universali potest dici quod est ubique et semper; non enim habet magis quod sit in uno loco quam in alio, nec in uno tempore quam in alio. Et cum illud universale sit apud intellectum istius apud quem non erat prius, hoc non fit per viam translationis, cum tale ens non sit in loco comprehensum. Videtur quod sit per modum cujusdam causationis, et talis virtus posset dici intellectus possibilis quem concomitatur intellectus agens faciens intellectionem, et istae virtutes ambae possunt dici, cum quaelibet agat aliquid abstractum, intellectus agens et sic in generali una virtus; in speciali tamen sunt duae virtutes. Et quia esse objectivum animae superioris quod venit apud virtutem interiorem particularem, et illud esse objectivum animae universale habuit sic habitudinem propinquam[v] ad esse unum subjectivum respectu cujus accipiuntur. Unum attribuitur alteri in praedicatione, puta universale singulari, ut dicitur Socrates est homo, et similiter in universalibus animal homini. Et si quaeras utrum, sicut est universale objectivum apud intellectum, sit aliquod universaliter subjectivum correspondens; et diceretur quod sic, ita quod si non omnia uniuntur in uno esse subjectivo, sed secundum quamlibet speciem sit esse subjectivum proprium, tunc universali objectivo esset esse subjectivum correspondens, quod non multiplicaretur in esse, esse objectivo multiplicato intellectui. Ille enim qui est intellectus clarioris et abstractioris intelligens albedinem habet albedinem in esse clariori apud intellectum quam alius minus clare intelligens.

Et de isto esse universali subjectivo diceretur quod est quidditas singularium, principium essendi eis et principia intelligendi ea et mul/ta conformiter 24v quae ponebat Plato;[244] non tamen subsisterent in aëre ut forsan ex verbis Platonis habebatur, contra quae arguit Aristoteles;[245] ponebat enim quod haberent esse separatum a singularibus et contra hoc dicit Aristoteles *proo̮emio de Anima*[246] quod animal universale positum a Platone vel est nihil vel est posterius singularibus, ita quod non valebit ad intelligendum ipsa singularia. Et hoc est verum supposita tali separatione, et ita esse objectivum universale attribueretur in praedicatione esse objectivo singulari; esse objectivum universale reciperetur pro illo esse subjectivo universali quod est quidditas ipsorum singularium, et ita in hac propositione: Socrates est homo, non accipitur "homo" pro Socrate quasi habens suppositionem personalem ut multi innuunt[w] et false.[247] Ille enim qui format istam propositionem non experitur in praedicato propositionis habere se Socratem per modum objecti, sed solum naturam hominis universalem. Et ideo ad illam consequentiam: Socrates est homo, homo est species; ergo Socrates est species, non est responsio, ut quidam dicunt, quod falsitas accidit propter variam suppositionem termini; nam in prima iste terminus "homo" habet suppositionem personalem et accipitur pro suo inferiori; in secunda habet suppositionem singularem; hoc est falsum ut dictum est, immo in illa: Socrates est homo, "homo" habet suppositionem simplicem; unde falsitas in hoc contingit quod

[u] Ms. servum.
[v] Ms. propinqua.
[w] Ms. innunt?

[244] Cf. Phaedo, 100 a ff.
[245] Cf. 991 b 2 ff.
[246] Cf. 402 b 7.
[247] Cf. Psellus; *in* K. Prantl, *Geschichte d. Logik* (Leipzig, 1927), II, p. 288.

licet homo praedicetur de Socrate; nam ipsum universale subjectivum est pars Socratis, non tamen adaequate idem Socrati, sed est in plus, cum etiam quidditas sit Platonis, et ideo ratione hujus inadaequationis potest sibi attribui aliquod praedicatum quod non inerit suo inferiori, et ideo praedicatum attribuitur tali rei in quantum erat aliquid diversum ab ipso singulari, et ita fallacia accidentis. Unde secundum istam viam non pono nisi duas species suppositionis; materialem, ut homo est dissilabus; formalem quando terminus accipitur pro suo significato ut Socrates est homo. Videtur etiam in ista: homo currit, potest dici quod homo accipitur pro illo esse subjectivo universali et licet sibi non debeatur actus currendi nisi quia primo inest singulari, tamen sibi competit et de ipso potest praedicari. Et advertendum est . . .

APPENDIX

Quaestio de Qua Respondet Magister Nicholaus de Ultricuria

UTRUM visio creaturae rationalis beatificabilis per verbum possit intendi naturaliter. Quod non quia omnis forma quae potest naturaliter intendi habet contrarium; patet inducendo in albedine et nigredine et sic de aliis. Sed visio non habet contrarium ut manifestum est; igitur. In oppositum: aliquod visibile intenditur et de hac sumus certi; igitur visio qua visibile videtur intenditur. Patet consequentia quia, si nullo modo esset intensa nunc et prius virtute ejus, non judicaremus objectum esse intensum nunc plus quam prius.

Prima conclusio: non est dare minimum visibile quod possit a visu videri, nec maximum visibile quod possit a visu videri. Patet quaestio ad primum membrum quia non est dare ita parvum quod possit videri quin minus eo possit videri sive illud minus sit toti inexistens sive sit per se existens. De minimo inexistenti patet quia, si videtur aliquod visibile, ejus aliqua pars videtur, et ita minus visibili; post videtur de minimo per se existenti; hoc idem probatur; nam aliter sequeretur quod esset dare ultimum instans rei permanentis in esse quod post ipsam non esset nec aliquid ejus. Probatur consequentia quia sit in hoc instanti quod minimum visibile videatur et sit approximatum unum agens quod debet ipsum remittere, in hoc instanti videatur illud minimum et immediate post hoc non videbitur; et sic patet consequentia quod esset dare ultimum instans in quo visio illa esset, et sic patet illa conclusio quoad primum membrum. Quoad secundum probatur quia, si sit aliquod visibile maximum quod possit a visu videri, tunc totus conatus virtutis requiritur ad videndum illud visibile; sed non sic est quia videatur etiam illud visibile per aliquod tempus, conatus illius virtutis ante finem illius temporis erit minor cum sit virtus fatigabilis, et cum illo conatu videbitur illud visibile, ex quo sequitur quod non est dare maximum visibile quod possit a visu videri.

Ex primo membro istius conclusionis sequitur unum corollarium, scilicet quod cum non sit dare minimum visibile quod possit videri et tamen potest esse ita parvum quod non potest videri, ut manifestat experientia, est minus eo vel saltem non est majus: et hoc declaratur quia decrescat aliquid visibile

UTRUM visio alicujus rei naturalis possit naturaliter intendi. Arguitur quod non quia omnis forma quae potest naturaliter intendi habet contrarium; patet inductive in albedine et nigredine et caliditate. Sed visio non habet contrarium ut manifestum est; ergo etc. In oppositum arguitur sic quia aliquod visibile perfectius et intensius potest videri; ergo visio qua videretur potest intendi. Consequentia nota est quia da quod non intenderetur visio, tunc per ipsam non clarius et perfectius videremus quam prius quia ad idem medium omnino invariatum sequitur idem judicium. Antecedens probatur quia ponatur quod aliquod sit visibile de longe ubi remisse videtur; constat quod per appropinquationem illius visibilis versus visum perfectius videtur in tantum quod aliud judicium habetur de eo nunc quam prius.

In ista quaestione sic procedam: primo ponam duas conclusiones de quaesito; secundo inferam aliquas conclusiones etiam materiam quaestionis tangentes; tertio ex illis inferam aliqua corollaria; quarto respondebo ad ra-quod potest videri donec non possit videri; capio tunc instans medium inter totum tempus quo potest videri et tempus quo non potest videri et quaero utrum illud visibile in illo instanti possit videri vel non; si possit videri in illo instanti, sequitur quod adhuc post illud instans potest videri quia declaratum est quod non est dare minimum visibile quod possit videri; si non possit videri in illo instanti, tunc illud est maximum inter illa quae non possunt videri quia nullum minus eo potest videri, et quodlibet majus eo potest videri.

Ex secundo membro conclusionis sequitur aliud corollarium, scilicet quod cum non sit dare maximum visibile quod possit a visu videri, et tamen procedendo versus magis, non quodlibet possit a visu videri, quia potest esse tantum, quod ipsum a visu non potest videri, sequitur quod est dare procedendo versus majus minimum quod non potest a visu videri quia, si visibile tantum quod non possit videri et decrescat continue donec possit videri, in instanti medio inter totum tempus quo non poterat videri et tempus quo poterat videri, vel potest videri, vel non potest videri; si possit videri, igitur adhuc ante illud tempus poterat videri, aliter illud visibile esset maximum quod potest videri, quod est improbatum; si non possit videri et immediate post hoc instans videbitur, sequitur quod illud sit minimum quod non potest videri.

Secunda conclusio: non est dare maximam distantiam a qua aliquod visibile possit videri nec etiam minimam a qua visibile possit videri. Probatur illa conclusio quantum ad aliquas partes ejus sicut prima conclusio quia, si esset dare maximam distantiam a qua possit videri, sic igitur quod visibile sit nunc in illa maxima distantia et elongetur immediate post hoc instans a visu, nunc in hoc instanti illud visibile videretur et immediate post hoc non videretur, et ita sequitur conclusio probanda. Per simile medium omnino probatur quod non sit dare minimam distantiam a qua visibile possit videri quia si nunc visibile in ista minima distantia nunc in hoc instanti videretur et immediate post hoc non videretur, et ita esset dare ultimum instans.

Ex illa conclusione sequuntur duo corollaria quod cum non sit dare maximam distantiam a qua visibile potest videri, et cum non a qualibet possit videri quia posset esse in magna[a] distantia quod ab ea videri non posset, sequitur quod est dare minimam distantiam a qua non potest videri, et probatur sicut corollarium primae conclusionis quia si visibile in tanta dis-

tionem quae contra me videtur sonare.

Prima conclusio sit ista quod visio naturaliter potest intendi. Istam probo sic; nam omnis forma quae potest successive acquiri cum continuo augmento ejusdem potest intendi; sed visio potest successive acquiri cum continuo augmento; igitur etc. Major nota de se; minor declaratur; nam si visibile sit in minima distantia in qua non potest videri et approximetur visui, tunc si successive approximetur visibile, sic visio acquiritur successive et continue augmentatur.

Secunda conclusio est quod visio virtute agentis finiti non potest naturaliter causari in instanti quia si sic, sequitur quod aliqua virtus aliquando ageret suum effectum in infinitum facilius quam ipsa eadem in alio casu, licet ageret ex toto conatu suo. Probatur illa sic: quia illa visio causata in instanti esset alicujus intensionis; nunc autem quando agens ille ageret a principio intendendo visionem suam tempus esset antequam posset inducere visionem tantae intensionis quia antequam ageret visionem duplam prius ageret sub duplam et postea visionem sub triplam et postea sub quadruplam et sic in infinitum, et sic in infinitum facilius ageret effectum suum in uno casu quam tantia quod non possit videri et approximetur visibile versus visum donec possit videri, et quaero de instanti medio inter totum tempus quo non potest videri, et inter totum tempus quo potest videri et quaero utrum in isto instanti medio visibile possit videri; si possit videri et circa illud instans non poterat videri per positum, igitur illa distantia esset maxima a qua visibile posset videri quod est improbatum; si non possit videri, igitur illa distantia est minima a qua non potest videri et quia dictum est quod non est dare minimam distantiam a qua visibile / potest videri, et tamen potest esse ita parva 191^{v} quod ab ea non potest videri, sequitur quod est dare distantiam maximam a qua non potest videri; et probatur sicut praecedentia corollaria.

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[a] *Read* ita magna?

Tertia conclusio: ad intelligendum in quo conceditur quod formae graduales intenduntur et remittuntur, dico quod visio naturaliter potest intendi; nam omnino forma quae potest successive acquiri [b] cum continuo augmento ejusdem potest intendi; sed visio est ejusdem modi; nam si visibile sit in minima distantia a qua non possit videri et approximetur versus visum, tunc sicut succedente approximatur visibile, sic visio acquiretur successive et continue augmentabitur.

Quarta conclusio: visio virtute agentis finiti non potest naturaliter causari in instanti; nam si sic, sequeretur quod aliqua virtus aliquando ageret suum effectum in infinitum facilius quam ipsa eadem in alio casu, licet ageret ex toto suo conatu. Probabo quia illa visio causata in instanti esset alicujus intensionis; nunc quando illud agens ageret a principio intendenti visionem suam, tempus esset antequam posset inducere visionem tantae intensionis quia antequam agat visionem duplam, aget prius visionem sub duplam et visionem sub quadruplam et sic in infinitum. Ad rationem in oppositum dico per interemptionem, immo forsan actus omnes animae nostrae possunt intendi et remitti; de hoc tamen me non determino ad praesens.

Probabo [c] quod est dare maximum visibile et minimum quia illud visibile est maximum quo nullum majus potest videri et illud minimum quo nullum

in alio casu; ipsamet ageret supposito quod secundum totum conamen suum ageret. Item arguo sic: corpus luminosum non potest subito producere lumen; ergo nec agens per visionem. Consequentia videtur tenere; per totaliter simile antecedens probatur quia si sic, sequitur aliqua inconvenientia. Primum quod ad corpus luminosum uniformiter aeque formaliter praecise ageret in medium densius sicut in medium subtilius; secundo sequeretur quod corpus luminosum ageret in aliquod medium continue infinita velocitate. Ista sunt falsa et absurda; igitur illa ex quibus sequuntur. Sed probo quod illa sequuntur si corpus luminosum subito agat suum lumen. Primo probo primum, quod aliquod corpus et etc., quia sit *a* unum corpus sphaericum luminosum uniforme per totum tam intensive quam extensive; et *b* medium summe obscurum sufficienter dispositum ad quem ad quemlibet gradum luminis capiendum, et hoc uniformiter per totum; deinde ponatur *a* in medio *b* cujus aliquis radius punctum *c b* medii luminet ex adverso ducto; deinde *b* medio contiguetur *d* medium densius cujus quemlibet punctum sufficiat illuminare et sit gratia exempli primum medium aëreum; tunc arguo sic: hoc corpus luminosum *a* illuminabit tam *d* medium quam *b* medium subito; ergo utraque medium suo lumine subito penetrabit et ultra; ergo aeque fortiter penetrabit *d* medium sicut *b* medium, et si sic aeque fortiter aget in *d* sicut in *b* et *d* est medium densius; *b* vero est medium subtilius; ergo aeque formiter aget in medium densius sicut in medium minus densum et per consequens si medium secundum sit aqueum, ut suppono, sequeretur quod ita fortiter ageret in medio aqueo sicut in medio aërio. Quod tamen consequens sit falsum et inconveniens sic probo; nam ad minus; sed est dare tale visibile ut patet ab aliquo magno visibili procedendo versus majus et ab aliquo parvo procedendo versus minus. Item potentia visiva est determinatae virtutis in videndo quia est determinata in entitate; igitur et in virtute vel operatione minimum inexistens non potest videri absque eo cui inexistit. Instans non est aliquid distinctum a tempore nec tempus a motu nec motus a movente et mobili, vel si sit, tunc est dare ultimum instans rei permanentis quia res permanens, dato quod corrumpatur, non durat per tempus infinitum, sed solum per finitum, et omne continuum finitum habet duo ultima; igitur. Item res permanens tota est in aliquo instanti et post illud instans non erit; igitur.

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[b] *The scribe has put a long passage out of place;* cf. 192^{r}, *col.* 2, *l.* 29.

[c] Cf. 191^{v}, *col.* 1, *l.* 8.

Contra tertiam conclusionem: visibili continue moto et vidente non moto, in quolibet instanti fit alia visio, et adveniente posteriore praecedens corrumpitur sicut de radio. Item quia si praecedens maneret, hoc esset frustra cum per sequentem magis perfecte videatur. Item simul videtur magis perfecte et minus perfecte; igitur etc. Item tonitruum praecedit coruscationem quia tonitruum nihil aliud nisi fractio exhalationis inclusae inter aliquod humidum frigidum vel causatum ex illa fractione, tamen primo pervenit ad nos coruscatio quam tonitruum; et hoc videtur esse signum quod visio fiat in instanti.

Contra quartam conclusionem: illud quod fit subito absque perceptione durationis a re multum distante fit instantanee, quia, licet successio posset nos latere respectu parvae distantiae, non tamen respectu magnae distantiae; sed visio est hujusmodi quia immediate quod homo aperit oculos subito videt caelum.

Contra responsionem quartae conclusionis, quia producens aliquam partem determinatae quantitatis alicujus formae gradualis simul producit infinitas partes ejusdem proportionis sive inexistentes, et tales partes ejusdem quantitatis sunt perfectae; igitur.

Contra corollaria primae conclusionis, quia videtur repugnantia dicere maximum visibile quod non potest videri et minimum visibile quod non

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medium densius frangitur radius luminosus et ab incessu rectelineare obliquatur ut patet per unam propositionem scientiae perspectivae quae est ista: radius luminosus frangitur occursu medii densioris; sed ad medium minus densum aëreum non frangitur; sed ipsum medium perpendiculariter penetrat illaesus et rectus; ergo cum radii perpendiculares omnium aliorum fortissimi fuerint, sequitur quod fortius aget illud corpus luminosum in medium minus densum quam in medium densius. Et si ad istud diceretur quod *a* non illuminabit utrumque medium subito, propositum haberem quod lumen successive produceretur. Tunc probo secundum inconveniens quod aliquod corpus etc., quia sit *a* corpus luminosum quod aget latitudinem sui luminis in *b* medio uniformiter et hoc subito. Tunc arguo sic: *a* alterat *b* medium et nihil mundi potest velocius alterare; ergo *a* alterat *b* medium infinita velocitate, et cum *a* sic continue alteret, sequitur inconveniens, et hoc declaro fortius quia illud quod alteram et certam latitudinem induceret aliqua certa velocitate alteraret et hoc in aliquo tempore, et quod in sub duplo tempore in duplo velocius, et quod in sub triplo in triplo velocius et sic sine statu; sed hoc corpus *a* velocius alterat quam aliquod tale; ergo *a* alterat infinita velocitate et continue ut suppono; ergo continue alterat infinita velocitate.

Secundo infero aliquas conclusiones materiam quaestionis tangentes: prima conclusio sit ista quod non est dare aliquod minimum visibile quod posset a visu videri quin minus eo possit a visu videri sive illud minimum sit toti inexistens sive sit per se existens. De minimo inexistente patet quia, si aliquod visibile videtur, ejus aliqua pars videretur, et ita minus minimo visibili videretur. De minimo per se existente hoc sic potest videri, quia visibile dicitur quod est aptum videri, et probo quod non est dare aliquod tale quia omne quantum coloratum est visibile in debita distantia et exclusis impedimentis extrinsecis; sed illud, quodvis ponitur maximum vel minimum quod non potest videri, est quantum coloratum, quia non differt ab illo quod potest videri nisi penes majus vel minus. Item illud maximum visibile quod non potest videri vel est maximum extensione subjecti maximi vel maximum intensione, hoc est perfectissimum. Non primo modo quia sive sit finitum sive infinitum, quanto erit majus, tanto erit magis visibile, dum tamen sit debita distantia inter potentiam et ipsum. Si secundo modo cum omne visibile sit color vel aliquid simile colori, et omne tale possit videri, sequitur quod non est dare maximum vel minimum visibile quod non possit videri. Item illud quod dicitur maximum etc., quod non potest videri vel est perceptibile ab aliquo sensu vel a nullo; si a nullo vel ab alio ab ipso visu; non tamen a visu impropriissime locutum est dicere visibile illud, quod nullo modo est sensibile, vel dicere visibile quia est gustabile; si dicatur visibile non quia ipsum sit visibile, sed quia est ejusdem rationis cum illo quod potest videri, sed differt secundum magis vel minus, quia est excellens visibile vel diminutum visibile non valet, quia eo ipso quod remanet infra rationem visibilis potest videri.

Probatio primae conclusionis non valet quantum ad secundum membrum de conatu quia non immediate conatus diminuitur, immo aliquando ex delectatione consurgente ex tali operatione augetur, aliquando est in statu, et aliquando diminuitur.

Ad responsionem primam cum dicitur: illud visibile est maximum quod potest videri et nullum majus eo potest videri, nego illam quia implicat illam: aliquod visibile est maximum quod potest videri, et illud est falsum; similiter nego minorem illius replicationis et dico quod nullum est visibile quin majus eo possit videri.

Ad aliam cum dicitur: potentia visiva est determinatae virtutis, et ideo concedo quod non potest videre quantum infinitum. Ad aliam cum dicitur: minimum existens non potest videri absque eo cui inexistit, concedo, nec ex hoc sequitur aliquid contra me. Ad aliam partem illius antecedentis: instans non distinguitur a tempore etc., dico: quicquid sit ratio, ulterius non procedit probatur; nam aliter sequeretur quod esset dare ultimum instans rei permanentis in esse; probo quia ipsa res non esset nec aliquod ejus; hoc falsum; 8 *Phys.*[1] Probatur consequentia quia fit ita quod in hoc instanti minimum visibile videtur et sic unum agens approximatum quod debeat ipsum remittere, tunc in hoc instanti videbitur illud medium et immediate post hoc non videbitur nec aliquid sui, quia illud est minimum potens per se existere per adversarium; ergo illud est ultimum instans in quo illa visio esset.

Ex illa conclusione infero unum corollarium quod non est dare minimum quod possit a visu videri, et tamen potest esse ita parvum quod non potest videri ut manifestat experientia. / 212ᵛ

Secundo sequitur quod procedendo versus minus contingit dare maximum visibile quod non possit videri sic intelligendo quod illud visibile non potest videri et quodlibet quod non potest videri circa ipsum est minus ipso vel saltem non est majus. Et hoc demonstratur sic quia decrescat aliquod visibile quod potest videri donec non potest videri, tunc capio instans medium inter totum tempus quo potest videri et tempus quo non potest videri; et quaero utrum illud visibile possit videri in illo instanti, vel non; si posset videri in illo instanti, sequitur quod adhuc post illud instans potest videri quia declaratum est quod non possit dari minimum visi-contra me quia esto quod aliqua res non duret nisi tempore finito, non oportet tamen quod ipsa sit in ultimo instanti terminante illud tempus quo ipsa existit. Ad quartam cum dicitur: res permanens tota est in aliquo instanti et postea non erit, dico quod immo postea erit vel aliqua pars ejus si corrumpatur naturaliter./ 192r

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[1] Cf. 251 b 30 ff.

Ad objectiones contra corollaria cum dicitur quod est repugnantia dicere maximum visibile quod non potest videri, dico quod dixi: maximum visibile quod non potest videri, ad istum intellectum quod non est possibile naturaliter quod ipsum sit tantae quantitatis et non majoris et sit per se existens et quod ipsum videatur; concedo tamen quod ipsum potest videri si augeatur, vel posset videri virtute agentis supernaturalis, nec illud nocet intento meo, quia sufficit mihi quod aliquod quantum possit tantum diminui quod ipsum non potest videri; et cum dicitur quod nullum est tale quia omne quantum coloratum est visibile; dico quod non omne quantum coloratum est visibile ad istum intellectum quod sit possibile naturaliter quod ipsum per se existens tantae quantitatis videatur.

Ad tertiam cum dicitur: illud visibile maximum quod non potest videri vel est maximum extensione subjecti etc., dico quod ipsum non est maximum cum ego ponam quod non potest videri propter sui parvitatem; sed dicitur maximum quod non potest videri quia ipsum ratione sui parvitatis non potest videri et quodlibet majus eo potest videri.

Ad quartam cum dicitur: illud maximum quod non potest videri vel est perceptibile ab aliquo sensu etc., dico quod ipsum potest augeri vel in toto existens potest percipi; sed naturaliter non est possibile quod ipsum sit tantae quantitatis et non majoris et quod ipsum percipiatur.

Ad illud, quod dicebatur contra responsionem primae conclusionis de conatu, dico quod si visibile offensivum visus, tunc probata est conclusio mea, et si nullum sit majus visibile, finaliter nec ubi non erit offensivum sed delectativum. Item propter delectationem non percipiatur debilitatio cum in rei veritate debilitatur. Item illa conclusio posset ostendi in virtute levativa ponderis quae non delectatur quod ipsa non tantum pondus potest levare quin majus possit.

Ad responsionem contra tertiam [e] conclusionem: visibili continue moto in

bile quod possit a visu videri; si non possit videri in illo instanti, tunc illud est maximum inter ea quae non possunt videri quia nullum minus eo potest videri et quodlibet majus eo potest videri.

Secunda conclusio principalis in ista materia est ista quod non est dare maximum visibile quod possit a visu videri quia si sit aliquod visibile maximum quod possit a visu videri, tunc totus conatus virtutis visivae requiritur ad videndum illud [d] visibile; sed non sic est quia videatur illud visibile per aliquod tempus conatus virtutis illius temporis erit minor, cum sit virtus fatigabilis, et tamen tunc videbitur illud visibile; ergo prius quando virtus fuit fortior majus visibile potuit vidisse et sic illud non erat maximum.

Ex illa conclusione infero etiam quod non est dare maximum pondus quod homo potest portare quin majus posset portare; probatur sicut prius. Secundo infero quod non est dare maximam distantiam a qua visibile aliquod posset videri; probatur quia, si sic sit, ergo quod illud visibile nunc sit in illa maxima distantia et elongetur immediate post hoc instans a visu, tunc in hoc instanti illud videtur et immediate post hoc non videtur; ergo illud esset ultimum instans ejus etc.

Et ex ista sequitur unum corollarium quod cum non sit dare maximam distantiam a qua visibile possit videri, et quolibet instanti fit alia visio, nego illam, et dico ulterius ad aliam probationem quod si praecedens maneret, non esset frustra quia posterior ex priore componitur, vel ex priore et posteriore componitur una perfectior altera illarum. Ad aliam probationem cum dicitur: idem videtur magis perfecte et minus perfecte, dico quod hoc est possibile diversis visionibus. Item tota visione videtur tota res et parte visionis pars rei videtur; quare non valet.

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[d] Ms. ille.

[e] Ms. quartam.

Ad responsionem contra quartam conclusionem: illud, quod fit subito etc., fit in instanti, nego quia aliquid potest fieri quia immediate post hoc fit et tamen fit successive et non in instanti; et cum dicitur: apertis oculis statim videmus caelum, sic dico quod approximato igne stupae statim videmus stupam comburi.

Contra primam responsionem quod major indebite negatur ex eo quod ibi includatur aliquid esse maximum visibile quasi velit dicere, ut mihi videtur, quod ex eo est neganda quia includit conclusionem et per consequens illud quod deberet probari. Sed si illa valeret, nulla esset bona probatio, quia in omni bona probatione inferens aliquo modo includit illatum, etiam in loco a contradictorie oppositis quia ibi in antecedente intelligitur una propositio in virtute cujus sit illatio, videlicet de quocumque affirmatur alterum contradictoriorum. Negatur reliquum eodem modo in loco a contrariis quia ibi illatio fit in virtute istius quando impossibile est aliquod subjectum esse sine altero duorum, si unum ipsorum non inest, necesse est alterum inesse. Ecce quod semper illatum aliquo modo includitur in inferente! Et ideo unum disparatum non infert reliquum, sed bene negatione ipsius quae de connotato est ipsum inferens met; unde numquam ex homine infertur asinus. Unde si illa responsio valeret, sillogismus factus in primo modo primae figurae, qui est potissimus inter omnes, non esset bonus sillogismus quia major propositio implicat conclusionem ut notum est. Unde nullum est inconveniens, immo est necessarium quod conclusio probanda implicetur in praemissis cum aliquibus terminis ex quibus fiant propositiones magis notae. Et quia major negata est, probo ipsam per expositionem nominis quia maximum dicitur aliquid quia non habet excedens, licet non repugnat sibi habere aequalia; et illud dicitur maximum negative per negationem excessus ab alia, vel dicitur

cum non a qualibet distantia possit videri quia posset esse ita magna distantia quod ab ea videri non posset, sequitur quod est dare minimam distantiam a qua non posset videri, et probatur sicut corollarium primae conclusionis; quia sit visibile in tanta distantia quod non possit videri et approximetur visibile versus visum donec possit videri; tunc quaero de instanti medio inter totum tempus in quo potest videri et inter totum tempus in quo non potest videri, et quaero utrum visibile in illo instanti medio possit videri vel non; si sic, et circa illud instans non possit videri per positum; ergo illa distantia esset maxima a qua visibile posset videri, quod est improbatum; si non potest videri; ergo illa distantia est minima a qua non poterit videri.

Quarto infero quod non est dare minimam distantiam a qua visibile poterit videri et probatur per simile medium omnino sicut tertia conclusio quia sit nunc visibile in illa minima distantia, tunc in hoc instanti videtur et immediate post hoc instans non videbitur, et ita esset dare ultimum instans rei permanentis in esse.

Ex hoc sequitur unum corollarium quod cum non possit dare minimam distantiam a qua visibile possit videri et tamen potest esse ita parva quod ab ea non potest videri, sequitur quod est dare distantiam maximam a qua non potest videri et probatur sicut corollaria praecedentia. Tunc ad rationem in oppositum quando dicitur: omnis forma quae potest naturaliter intendi etc., negatur major quia actus animae nostrae non maximum positive quia omnia alia excedit. Modo sumendo primo modo maximum major propositio necessario est vera quia solum sumit terminos exponentes et expositum. Etiam minor patet per corollaria et per dicta nostra, quia dicitur quod aliquod est visibile ita magnum quod non potest visu videri./ 192^{v}

Contra responsionem ad secundam responsionem arguo sic: virtus visiva est determinatae perfectionis per concessa; igitur habet certum numerum graduum sic quod non plures; detur oppositum; igitur non fuit determinata ad illos gradus. Item omne terminatum vel determinatum habet actu cum semper vel terminos sive intrinsecos sive extrinsecos ipsum actu terminantes; sed tam virtus visiva quam visibile est terminatum. Item quando dicitur quod non est dare etc., vel intelligitur quod actu non est maximum visibile vel minimum, vel non est, id est, non convenit, et per consequens non est possibile; si primo modo falsum est accipiendo tam potentiam visivam quam ipsum visibile quantum ad esse actuale praecise quia illud quod est in potentia actuali et ultimata non impeditum habet actu suam perfectionem sicut grave deorsum, et confirmatur quia tota aliqua natura specifica non frustratur toto tempore a sua ultimata perfectione; sed ultimata perfectio visus est videre perfectissimum visibile sibi possibile. Item possibili posito in esse nullum sequitur impossibile; sed omne visibile tam illud quod est actu quam illud quod est solum in potentia est possibile videri; igitur posito quod actu videatur, nullum sequitur impossibile. Vel arguatur sic: omne possibile in actu successive est totum possibile simul nisi sequatur aliqua repugnantia; sed ex positione omnis visibilis in actu nulla sequeretur repugnantia quia tale visibile ex hoc non esset infinitum actu quia virtus visiva, cum sit finita, non potest sine termino videre perfectius, immo oportet quod determinet se ad gradus qui, si essent actu, essent finiti.[f]

Probo quod est dare ultimum instans rei permanentis quia ultimus modus essendi rei permanentis est esse praesentis; sed nulla res est praesentis nisi in instanti quia habere esse praeteritum vel futurum non est habere esse, sed fuisse vel futurum esse. Item est dare primum instans rei permanentis; igitur et ultimum quia illud instans medium est commune tempori praeterito et futuro, sed attribuatur posteriori passioni tanquam digniori; sed hoc est solum per intellectum cum de se sit communis utrique.[g]

Ad quaestionem quando quaeritur utrum etc., suppono primo [h] quasdam

habent contrarium et tamen credo probabiliter loquendo quod possunt intendi et remitti quia cuilibet actui animae rationalis potest aliquid addi quod erit ejusdem rationis cum remanente in eodem subjecto praecise; ergo quoddam tale potest intendi et remitti. Consequentia patet per expositionem vocabuli quia illa forma dicitur intendi cui additur aliquid ejusdem rationis in eodem subjecto praecise; et illa forma dicitur remitti a qua diminuitur aliquid ejusdem rationis cum remanente in eodem subjecto praecise. Antecedens declaratur inducendo tam in actibus sensitivis quam intellectivis; primo in actibus sensitivis quia quilibet experitur quod si objectum esset remotum, tunc debiliter videretur propter distantiam, tamen si continue objectum approximetur, tunc clarius videbitur quam ante cum sit melius dispositum, et hoc voco visionem intendi. Eodem modo arguitur de actibus sensitivis aliis; hoc etiam patet de actibus intellectivis quia sicut homo experitur se clarius videre objectum, si sic format aliquam propositionem in talem de illo objecto, continue et continue melius illi assentit.[g]

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[f] Cf. 192^{v}, *col.* a, *l.* 26.

[g] Ms. A (*Paris Bibliothèque Nationale, Latin 6559*) and Ms. B (*Paris B.N., Latin 14576*) *are collated from here to the end of the question.*

[h] B *om.*

experientias quas quilibet nostrum experitur; experimur enim quod actiones rerum naturalium diversis modis variantur vel procedunt. Videmus primo quod agens agit fortius vel debilius, nobilius vel ignobilius ex hoc quod ipsum agens est majoris virtutis vel [i] minoris; vel ex hoc quod passum est magis vel minus dispositum; [i] vel ex hoc quod agens ad passum nobilius vel ignobilius applicatur et secundum intensionem illorum effectus consequentes communiter intenduntur vel remittuntur. Et non solum mihi videtur quod [j] hoc habet locum in actionibus exterioribus, sed etiam in intellectionibus quia secundum quod potentia intellectiva est magis vel minus disposita et secundum quod [k] objectum [k] fortius vel debilius movet, vel secundum quod nobilius vel minus [l] nobiliter obicitur [l] potentiae, secundum hoc objectum agit sui cognitionem majorem vel minorem. Et quia in istis non reperio minimum gradum quin si objectum taliter applicatum aliqualiter moveat quin objectum minus nobiliter applicatum minus movebit, nec videtur mihi reperio gradum maximum cognitionum creaturarum quin qualitercumque objectum applicatur nobiliter quin nobilius possit applicari vel [m] per potentiam creaturae [m] vel per potentiam Dei, ita quod Deus potest semper nobiliorem [n] et nobiliorem respectu illius causare cum hoc respectu [n] potentiae Dei nullam omnino includit contradictionem, immo hoc magis convenit cum articulo omnipotentiae Dei.

Ex istis, inquam per rationem et experientiam, declaratis elicio aliquas propositiones quarum [o] prima est haec: nulla creatura potest aliam creaturam comprehensive cognoscere; ista probatur sic: nihil potest aliud comprehensive cognoscere nisi cognoscat illud tantum quantum cognoscibile est; sed nulla [p] creatura potest aliam cognoscere tantum quantum cognoscibilis est; igitur nulla creatura potest aliam creaturam comprehensive cognoscere. Major [q] de se videtur manifesta quia hoc est comprehensive cognoscere. Minorem probo quia nulla est [r] cognitio creata [s] habita respectu alterius creaturae quin illa creatura si nobilius obiceretur potentiae, vel potentia esset magis elevata, quin tunc tale objectum posset meliorem cognitionem causare vel saltem Deus hoc potest; sequitur igitur conclusio quod nulla etc.

Ex ista propositione infero [t] aliqua corollaria. Primum [u] est istud [u] quod capta quacumque cognitione creata in infinitum potest alia cognitio creata esse major vel virtute Dei vel virtute creaturae. Istidem [v] statim patet per praecedentia quoniam capta quacumque cognitione in duplo potest esse aliqua major, in triplo potest esse aliqua major et sic sine statu; igitur in infinitum potest esse aliqua major.

Secundum corollarium est istud quod possibile est dare aliquam cognitionem de qua verum [w] est dicere: immediate post hoc haec [x] cognitio intendetur, et [x] immediate post hoc remittetur, quia capio aliquam cognitionem quae sit *a* et sit *b* una evidentia movens ad oppositum *a* sic quod *b* evidentia continue fit debilior et [y] debilior.[y] Tunc arguo: immediate post hoc *b* evidentia [z] movebit ad oppositum *a* cognitionis; igitur *a* cognitio remittetur. Consequentia de se patet et probo quod intenderetur et arguo sic: in quolibet instanti post hoc haec cognitio erit major quam fuit in aliquo instanti inter illud instans et instans primum; igitur intendetur. Antecedens probo quia capto quocumque instanti post hoc erit haec vera: ista evidentia quae est *b* minus movet quam prius; igitur haec cognitio est fortior quam prius, et sic sequitur quod immediate post hoc intendetur *a* cognitio et immediate post hoc remittetur.

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[i] B vel . . . dispositum *om.*

[j] A *om.*

[k] B *om.*

[l] B ignobilius.

[m] B vel . . . creaturae *om.*

[n] B meliorem et nobiliorem cognitionem causare respectu illius.

[o] B *om.*

[p] B nulla re.

[q] B major nota.

[r] B *om.*

[s] B causata.

[t] A infert.

[u] B prima est quod.

[v] B ista.

[w] B *om.*

[x] B hec . . . et *om.*

[y] B *om.*

[z] B evidenter.

Tertium corollarium sequens ex istis est illud quod *b* evidentia numquam movebat potentiam ita tarde vel tanta tarditate quin evidentia debilior posset movere potentiam tardius vel majori tarditate, et tamen impossibile est [a] aliquam / evidentiam etiam in centuplo debiliorem *b* movere tardius aliquam 193ʳ potentiam quam *b* movebat suam. Prima pars istius corollarii satis patet quia quacumque tarditate potest agere evidentia major potest evidentia minor sicut de se patet. Aliam partem probo quia si aliquid possit debilius movere suam potentiam quam *b* fecit suam; ponatur igitur quod *c* moveat suam potentiam tardius quam *b* fecit suam. Contra: *b* in prima parte proportionali temporis movebat suam potentiam aliqualiter tarde et modo *c* non movet in infinitum tardius quam fecit *b*. Sit igitur quod moveat in duplo tardius quam fecit *b* in prima parte proportionali sui temporis; tunc arguo sic: *c* movet potentiam suam tardius quam *b* fecit suam in prima parte proportionali sui temporis, et hoc praecise in duplo tardius. Sed *b* in secunda parte proportionali sui temporis in duplo tardius movebat quam ipsamet fecit in prima parte proportionali sui temporis quia *b* continue minus movet; igitur *b* movebat ita tarde in secunda parte proportionali sui temporis sicut modo facit *c*, quod est intentum etc.

Exemplum illius corollarii potest dari in naturalibus quia imaginamur [b] vacuum et capio grave simplex positum in vacuo, tunc secundum Philosophum [2] illud grave non potest movere in vacuo quia non habet resistentiam extrinsecam nec etiam intrinsecam. Approximetur igitur in hoc instanti ignis qui incipiat alterare illud grave simplex inducendo in ipsum resistentiam certam; tunc sicut fuit prius dictum quod *b* evidentia continue movebat tardius in parte temporis posteriori quam priori, ita illud [c] grave post hoc continue movebitur tardius in parte temporis posteriori quam priori, quia in parte temporis posteriori habebit plus de resistentia quam in parte priori, et per consequens in parte posteriori tardius movebitur, quia tardius movetur cum resistentia majori quam minori. Tamen ex isto casu sequitur unum speciale, scilicet quod illud grave taliter descendens continue remittet motum suum, et tamen impossibile est aliquid velocius moveri quam illud grave movebatur, immo si ipsummet [d] continue intenderet motum suum sicut modo remittit, non velocius moveretur si nunc continue intenderet quam jam de facto movetur ubi continue remittit. Prima pars patet quia illud grave continue remittit motum suum quia continue resistentia sua augebitur; et probo quod si continue intenderet non velocius moveretur quam movebatur in remittendo quia si continue intenderet nulla erit velocitas qua movebatur quin [e] consimili vel majori moveretur quando remittebat quia, si sit alia major qua movebitur [e], quando continue intendet motum quam fuit aliqua velocitas qua movebatur quando continue remisit, tunc illa provenit ex aliqua proportione virtutis agentis ad resistentiam passi, sic igitur quod provenit a proportione quadrupla; tunc sic aliquando virtus illius gravis se habuit ad suam resistentiam in proportione dupla; igitur ad suam medietatem se habuit in proportione quadrupla. Probatur consequentia quia tunc agens et tota resistentia et medietas resistentiae se habent sicut-octo, quattuor et duo; modo octo ad quattuor se habent in proportione dupla; octo ad duo in proportione quadrupla quia quando tres termini sunt continue proportionales, proportio primi ad ultimum est duplo major proportione primi ad secundum. Sequitur igitur quod agens tunc se habuit ad medietatem resistentiae in proportione quadrupla, et tunc egit ita velociter sicut nunc quando intendit. Sequitur igitur quod si continue intendisset motum sicut modo remisit non velocius movisset quam faciet [f] modo quando continue remittit.

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[a] B est dare. [b] B imaginemur. [c] B sicut. [d] A ipsemet.
[e] B quin . . . movebitur *om.*

[2] Cf. 215 a 19 ff.

Ex istis infero unam propositionem quae est haec, et satis volo quod sit pro una conclusione principali, scilicet quod impossibile est aliquam cognitionem creatam in instanti causari [g] a virtute creata et illud probo quadam ratione judicio meo quae ostensive procedit et arguo sic: impossibile est aliquod intensibile vel remissibile instantanee produci; quaelibet cognitio creata est hujusmodi; igitur. Majorem ego probo sic: capio aliquam cognitionem causatam [h] in instanti ab aliquo objecto; tunc pono quod illud objectum continue post [i] hoc fortificetur et moveat fortius. Tunc arguo sic: non potest melior causa dari quare illud objectum agit illud instantanee suam cognitionem nisi propter fortificationem objecti [j] vel quia objectum nobiliter applicatur potentiae vel propter bonam dispositionem patientis vel propter [k] omnia ista; sed in quolibet instanti post hoc potentia erit ita bene disposita sicut modo vel melius et objectum fortius movebit quam modo et agens ita bene vel melius applicatum potentiae sicut modo, quia,[l] si secundum hoc instans est aliqua cognitio ab eo causata, in quolibet instanti post erit tanta producta instantanee sicut modo, vel major ex quo causae fortificantur. Consequentia videtur de se esse satis evidens; impossibilitatem consequentis probo quia si in aliquo instanti post hoc causetur aliqua cognitio secundum se et quodlibet sui sicut [m] ista *a*, tunc capio aliquam cognitionem acquisitam immediate ante *a* quae sit *b*, tunc arguo: *a* est acquisitum in isto instanti primo secundum se et quodlibet sui; similiter *b* fuit acquisitum in instanti praecedenti secundum se et quodlibet sui; vel fuit *b* acquisitum in instanti immediato illi instanti in quo *a* fuit acquisitum; et hoc non quia,[n] tunc instantia essent immediata; si in instanti mediato, tunc cum inter [o] illa duo instantia cadit tempus medium, sequitur quod in illo tempore agens naturale fuit applicatum passo disposito, et cum agens non egit, quod est inconveniens, sequitur igitur conclusio quod nulla cognitio potest acquiri in instanti.

Ex alio [p] corollario concluditur quod [q] quicquid cognoscitur cognoscebatur, et quicquid videtur prius fuit visum,[q] quia argumentum [r] aeque [s] probat quod visio non fit in instanti sicut de cognitione. Patet corollarium quia quaecumque cognitio creata [t] detur, pars illius cognitionis fuit prius acquisita; igitur prius cognoscebatur./ 193v

Descendo modo ad quaesitum et supponendo quod cognitio capiatur [u] pro cognitione creata et verbum pro Verbo divino aeternaliter genito, reservando mihi alias distinctiones si [w] post [w] argumenta cogant; sic haec conclusio, ista conditionalis est necessaria [x], si aliquis videt verbum, videt quicquid est verbum et omne illud quod est illud [y] quod verbum, nec aliquo modo oppositum consequentis potest stare cum antecedenti. Illam conclusionem probo eodem modo quo Christus eam probavit in Evangelio Johannis 14;[3] et arguebat sic: *si cognovissetis*[z] *me, Patrem Meum utique cognovissetis.*[z] Unde dicente sibi Philippo: *Domine ostende nobis Patrem*, respondit[a] Christus: *Philippe qui videt Me videt et Patrem*, et addidit quasi redarguendo Philippum quasi diceret: *ex quo qui videt Me, et Patrem, quomodo dicis: ostende nobis Patrem?;* ex quo supple: *vides Me.* Modo si de potentia absoluta Dei posset esse quod viso Filio non videretur Pater, rationabilis fuisset petitio Philippi et rationabiliter dubitasset et per consequens irrationabiliter increpasset eum Christus dicendo: *quomodo dicis ostende nobis etc.* Patet igitur quod haec conditionalis est necessaria: Filius cognoscitur, igitur Pater;[b] et cum hoc concordat beatus Augustinus *de Trin. c. 3, 8*,[4] ubi dicit expresse quod neutrum sine altero[c] ostendi[c] potest. Istam eandem conclusionem persuadeo sic, et probo quod a quolibet debet magis concedi haec conclusio quam opposita quia quando sunt aliqua contradictoria et unum illorum est evidentius in lumine naturali quam ejus oppositum, illud quod est evidentius debet concedi ubi fides non est in oppositum, nec ubi ipsum esse falsum sequitur ex fide; sed haec est hujusmodi: viso Filio videtur Pater, et ipsum esse falsum non sequitur ex fide; igitur. Major videtur esse manifesta quia alioquin attribueremus Deo posse facere de genito non genitum vel posse verificare simul duo contradictoria vel quaecumque quantumcumque irrationabilia non repugnantia fidei, et dic, exponeremus fidem derisioni et dimitteremus in toto rationem naturalem. Minor patet unicuique, scilicet quod evidentius est dicere quod ubi Filius est, id quod est Pater; quod viso Filio videtur Pater et ejus oppositum non sequitur ex fide, quia tunc omnes tenentes eam essent censendi haeretici. Consequens falsum quia doctores approbati ab ecclesia illud tenent; sequitur igitur quod a quolibet debet hoc concedi.

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[f] B facit. [g] B creari. [h] B creatam. [i] B per.
[j] B objecti movetur. [k] B per. [l] B ergo. [m] B sit ita.
[n] A *om.* [o] B *om.* [p] B quo.
[q] B quod . . . visum, sic nunc cognitio prius fuit cognitio, si modo est visio prius fuit visio.
[r] B argumentum meum. [s] B aeque bene. [t] B causata. [u] B capitur.
[w] B sicut si prius. [x] B ista conditionaliter. [y] B idem.

Ex ista conclusione infero corollarie quod a quolibet Catholico est ista propositio concedenda: Pater fuit cognitus a Philippo et Filius et Spiritus Sanctus, et quod Patrem credidit esse et Filium credidit esse et Spiritum Sanctum, et tamen numquam credidit quod Pater fuit, nec unquam credidit quod Filius fuit. Probatur totum illud sic: hunc Deum credidit Philippus esse; hic Deus est Pater; igitur Patrem credidit esse et consequenter omnia alia; similiter quando credebat firmiter quod Filius non fuit, tunc Filium evidenter sciebat esse.

Secunda conclusio principalis est ista: videns verbum cognitione creata necessario videt aliud quam verbum; istam probo sic: videns verbum tali[d] cognitione necessario videt ipsam cognitionem creatam et illa est aliud quam verbum; igitur. Majorem probo et arguo sic: impossibile est aliquod signum ducere in notitiam alicujus rei ipso signo non apprehenso nec aliquo modo cognito; sed cognitio est signum ducens in notitiam cogniti; igitur si objectum cognoscetur, ipsa cognitio cognoscetur. Major istius rationis de se videtur manifesta quia da oppositum quod mediante signo habeam notitiam objecti et signum nullo modo sit cognitum, sequitur quod mediante aliquo[e] incognito, et virtute illius incogniti, dum manet incognitum, deveniam in notitiam alicujus rei prius non cognitae quod videtur repugnare rationi, quia non videtur causa quare magis illud signum omnino mihi incognitum deberet me ducere[f] in notitiam alicujus magis quam quodcumque aliud quod est mihi aeque incognitum. Sequitur igitur conclusio probanda et sic potest inferri quod omnis cognitio est sui experientia et seipsa cognita, quia non potest esse talis cognitio in [g] potentia [g] apta nata, quin [h] naturaliter cognoscitur sicut prius probatum est. Et hoc non est necessario per actum alium quia possibile [i] quod intellectus nullum [j] alium actum habeat. Sequitur igitur quod seipsa, et [k] videtur mihi quod illa conclusio sit expresse de [k] mente beati [l] Augustini 7 *de Trin. c.* 3[5] ubi probat [m] quod Filius [n] Dei ostendit Seipsum et Patrem et arguit sic: si [n] verbum nostrum temporale et transitorium seipsum ostendit,[o] et [p] illud de quo loquitur, quanto magis Verbum divinum; igitur supponit quod verbum nostrum seipsum ostendit, et per consequens seipso cognoscitur; igitur etc.[p]

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[z] B cognoscetis.
[a] B respondit ei.
[b] B igitur et.
[c] B alio videri.
[d] B cum.
[e] B aliqudo omnino.
[f] B inducere.

[3] Cf. *Joh.* XIV, 7–9.

[4] Cf. I, 8, 14, P. L. 42, 832.

Tertia conclusio principalis est haec quod possibile [q] est quod aliquis clare cognoscit [r] Verbum et tamen non cognoscat [s] se cognoscere [t] Verbum. Hoc [u] probatur: nulla creatura potest cognoscere se videre verbum sine actu complexo formato; sed creatura potest habere actum clarae visionis divinae incomplexum nullo complexo formato vel elicito; igitur potest videre Deum non cognoscendo se videre Deum. Major et minor, ut mihi videtur, sunt satis manifestae; et ex isto corollarie sequitur [v] quod licet omnis cognitio est seipsa experta et cognita; non tamen omnis cognitio est cognitio sui complexa quia, sicut probatum est, actus incomplexus est cognitio sui et non complexa, quia tunc esset aliqua talis, haec cognitio est vel aliqua talis propositio formata; sed ipsa potest esse nulla tali existente; igitur talis cognitio non erit cognitio sui complexa, nec [x] ipsamet seipsa cognoscetur complexe.

Ad rationem in oppositum quando dicitur: una persona potest etc., dico quod non est simile quia videri a creatura est extra se in creatura aliquid causare quia nihil potest a creatura videri nisi per visionem causatam; sed incarnari non est aliquid extra se causare, sed solum aliquid sibi uniri et sic non est simile.

[g] B *om.* [h] B quando. [i] B possibile est. [j] B *om.*
[k] B et ista conclusio videtur expresse esse de. [l] B *om.* [m] B dicit expresse.
[n] B Filius . . . si *om.* [o] B signat. [p] B et . . . etc. *om.* [q] B impossibile.
[r] B videat. [s] B cognoscet. [t] B videre.
[u] B haec. [v] B patet. [x] B *ends here.*

[5] Cf. VII, 3, 4, P. L. 42, 937.

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